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1 In United States District Court for the Eastern District of Louisiana

PAN AMERICAN PETROLEUM CORPORATION

vs.

UNITED STATES OF AMERICA ET AL.

No. 314 (In Equity). New Orleans Division

COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF THE CELOTEX COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

No. 315 (In Equity). New Orleans Division

GREAT SOUTHERN LUMBER COMPANY, BOGALUSA PAPER COMPANY, INCORPORATED

vs.

UNITED STATES OF AMERICA ET AL.

No. 317 (In Equity). New Orleans Division

STANDARD OIL COMPANY OF LOUISIANA

vs.

UNITED STATES OF AMERICA ET AL.

No. 331 (In Equity). Baton Rouge Division

1a Appeal from the District Court of the United States for the Eastern District of Louisiana, to the Supreme Court of the United States, returnable within Forty (40) days, from the 18th day of June 1937, at the City of Washington, District of Columbia.

Extensions of time granted by the Honorable Trial Court, bringing the return day up to and including the first day of November 1937.

2 [Omitted.]

3 In United States District Court for the Eastern District of Louisiana, New Orleans Division

In Equity No. 314

PAN AMERICAN PETROLEUM CORPORATION, PLAINTIFF,

vs.

UNITED STATES OF AMERICA, THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, DEFENDANTS

Bill of complaint

To the Honorable the Judges of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

Pan American Petroleum Corporation, a corporation, presents this its petition, or bill of complaint, against the United States of America and The Yazoo and Mississippi Valley Railroad Company; and thereupon plaintiff respectfully states:

4 I

Plaintiff, Pan American Petroleum Corporation, is a corporation organized and existing under the laws of the State of Delaware, qualified and licensed to do business in the State of Louisiana; and its principal operating office is at New Orleans, in said State of Louisiana and Eastern District of Louisiana. Plaintiff is engaged in the refining of petroleum and the production of various products therefrom which are distributed by shipment in carload lots, by railroad, in interstate commerce, to various states of the United States, other than Louisiana. In the conduct of its business, plaintiff receives carload shipments of various commodities, moving in interstate commerce, to plaintiff's refinery at Destrehan, Louisiana, in said Eastern District of Louisiana, from points of origin outside of the State of Louisiana.

II

Defendant, The Yazoo and Mississippi Valley Railroad Company (hereinafter for brevity referred to as the defendant carrier, or as defendant railroad company), is a corporation, organized and existing under the laws of the States of Louisiana, Tennessee, and Mississippi, and has its principal office and place of business at New Orleans, Louisiana, and is a citizen of the State of Louisiana.

Said defendant carrier is a common carrier by railroad of property in interstate commerce and as such is subject to the Interstate Commerce Act. It owns and operates certain lines of railroad within

the State of Louisiana and in said Eastern District of Louisiana and receives at points of origin on its lines of railroad, as well as
5 from connecting carriers, carload freight for transportation to and delivery at plaintiff's aforesaid refinery at Destrehan, Louisiana, and in like manner receives freight from plaintiff at its said refinery for transportation to destinations on its lines or on the lines of other carriers, all in interstate commerce.

Defendant, Illinois Central Railroad Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal office at Chicago, Illinois, and is a citizen of said state.

The capital stock of defendant, The Yazoo and Mississippi Valley Railroad Company, is owned by the Illinois Central Railroad Company and control under such stock ownership is vested in said Illinois Central Railroad Company.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission, entered June 25, 1935, in its docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services; and to enjoin and restrain the said defendant carrier from the cancellation of tariff filed with the Interstate Commerce Commission authorizing and providing an allowance of 90 cents per loaded car for services and facilities connected with the transportation of property and for the furnishing of instrumentalities used in such transportation at plaintiff's afore-
said plant in Destrehan, Louisiana, alleged to be required by
6 the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel, or in any manner depart from the allowances for transportation service set forth in tariffs on file with the Interstate Commerce Commission for services and facilities in transportation at plaintiff's aforesaid plant at Destrehan, Louisiana, or to make any effort to modify or change said tariffs in order to comply with the requirements of the said order, as more fully hereinafter set forth, and to set aside and hold for naught any and all acts of said defendant carrier performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated June 25, 1935.

IV

Plaintiff, Pan American Petroleum Corporation owns and operates, as aforesaid, the refinery at Destrehan, Louisiana, which, prior to September 1, 1934, was owned and operated by Mexican Petroleum Corporation of Louisiana, Incorporated, a Louisiana corporation, hereinafter for brevity referred to as the Mexican Corporation.

Said Mexican Corporation was dissolved on September 1, 1934, and is no longer in business as a going concern. Plaintiff is successor in interest to said Mexican Corporation and in the ownership and operation of said refinery at Destrehan.

V

Said defendant carrier by lawful tariffs, on file with the Interstate Commerce Commission, has published, and joined with other carriers in publishing, rates and charges for the transportation of property to and from the spurs, sidings, tracks and loading and unloading points in the plant of the plaintiff at Destrehan, Louisiana,
7 which rates and charges, so filed and established, contemplate the placement of the empty car at the place of loading and the removal of the loaded car therefrom, and its transportation over the lines of the defendant and its connections to consignee at final destination of said shipment and also in like manner contemplate the placing of the inbound loaded car at the final point of unloading in the plant of the plaintiff and the removal of the empty car therefrom.

Plaintiff demanded of said defendant carrier that it perform its duty under the law, as set forth in paragraph IX hereof, by transferring empty and loaded cars to and from loading and unloading points in plaintiff's said refinery. Defendant railroad company, in accordance with the requirements of the law, and in the performance of its duty under the law, elected to have plaintiff perform the terminal services at its said refinery. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between interchange tracks and points of loading and unloading in plaintiff's said refinery.

Said defendant carrier now has, and for several years has had, on file with the Interstate Commerce Commission, in accordance with the provisions of Section 6 of the Interstate Commerce Act, its tariff described as No. 2-B, I. C. C. No. 6700, revised page 171-B, authorizing and requiring the payment to the plaintiff (or to plaintiff's predecessor), of 90 cents per loaded car therein named as "terminal allowance," for services performed and facilities furnished by plaintiff (or by plaintiff's predecessor), in connection with transportation of carload traffic to and from loading and unloading points on appropriate spurs and sidings in plaintiff's refinery at Destrehan, Louisiana.

The amount of such allowance is less than the cost to plain-
8 tiff of performing the aforesaid service and is less than it would cost the said defendant carrier to perform the service with its own engines and employees. Such allowance, therefore, is not in excess of a just and reasonable allowance, and is lawful under paragraph 13 of Section 15 of the Interstate Commerce Act.

VI

On July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as Ex Parte 104, and assigned the same for hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges, and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which
9 such services reach beyond the carriers' terminals to particular locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a session at New Orleans, Louisiana, on May 9 to 12, 1932. At these various hearings witnesses appeared, gave oral testimony, and filed documentary evidence purporting to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties, including the plaintiff.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff and others, oral argument was had and thereupon the Commission issued its report and order, dated May 14, 1935, in which the Commission set forth its legal conclusions with respect to the general situation presented; various supplemental reports thereto were issued on said date; and on later dates further supplemental reports were issued, among others, the Sixteenth Supplemental Report, dated June 25, 1935, in which the Commission set forth its report and requirements with reference to the allowance paid to the aforesaid Mexican Corporation, predecessor of plaintiff, as will more particularly hereinafter appear.

Said original report of the Commission is reported in Volume 209 of the Commission's official reports beginning at page 11, and a

true copy thereof is attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length.

Said Sixteenth Supplemental Report of the Commission together with the order entered in connection therewith, is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

10 On July 18, 1935, plaintiff filed its motion with the Interstate Commerce Commission asking the Commission to vacate its said order or to postpone the effective date of said order for not less than forty days, or for such other period as the Commission may find appropriate and necessary. Said motion was denied on July 26, 1935.

VII

All of the evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants, and their connections, in the transportation of carload freight at, to, and from Destrehan, Louisiana, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an examiner, at New Orleans, La., May 9, 1932.

VIII

In alleged conformity with said order of June 25, 1935, defendant carriers filed with the Interstate Commerce Commission, third revised page 171-B of their aforesaid tariff No. 2-B, I. C. C. No. 6700, effective August 22, 1935, cancelling the schedule then on file with the Interstate Commerce Commission granting a terminal allowance of 90 cents per loaded car to plaintiff, as defined in the Commission's Sixteenth Supplemental Report, "Appendix B" hereto. Said third revised page states on its face, "Issued in compliance with order of the Interstate Commerce Commission in Ex Parte 104, Sixteenth Supplemental Report, of June 25, 1935."

Thereafter, plaintiff filed its petition with the Interstate
11 Commerce Commission in accordance with the provisions of the Interstate Commerce Act, seeking a suspension of the said tariff as proposing, in alleged compliance with said order of June 25, 1935, to cancel the terminal allowance to plaintiff for facilities furnished and services performed by it at its plant at Destrehan, Louisiana. So far no action has been taken on said petition.

IX

Section 1 of the Interstate Commerce Act. U. S. Code, title 49, Sec. 1, 41 Stat. L., 474, provides:

"(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, * * *.

(2) The provisions of this Act shall also apply to such transportation of passengers and property * * * but only in so far as such transportation * * * takes place within the United States, * * *.

(3) The term 'common carrier' as used in this Act shall include * * * all persons, natural or artificial, engaged in such transportation * * * as aforesaid as common carriers for hire. * * * The term 'railroad' as used in this Act shall include all * * * the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of * * * property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation,
12 and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. * * *

(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of * * * property to provide and furnish such transportation upon reasonable request therefor, * * *."

Section 6 provides:

"(1) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, * * * when a through route and joint rate have been established. * * * The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property * * * will be carried, * * * and shall also state separately all terminal charges * * * and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee. * * * The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act. * * *

(7) No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of * * * property, as defined in this Act, unless the rates, * * * and charges upon

which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of * * * property, or for any service in connection therewith, between the points named in such tariffs than the rates, * * * and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, * * * and charges so specified, nor
13 extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15, paragraph 13, provides:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Act approved February 19, 1903, as amended June 29, 1906 (U. S. Code, title 49, Sec. 41; 32 Stat. L., 847), provides, Section 1:

"The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, * * * and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce, and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. * * * Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or acts
14 amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act."

X

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of June 25, 1935, was issued.

XI

Inasmuch as the order of June 25, 1935 (in alleged conformity with which the tariff referred to in Paragraph VIII hereof was filed, canceling the terminal allowance to the plaintiff), is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of, will not grant full measure of relief to this plaintiff, unless all action which has been taken by the defendant carriers be set aside and held for naught, thereby restoring and making effective the lawful terminal allowances in effect on June 25, 1935.

XII

The said order of June 25, 1935, as set forth in Appendix B hereto is unlawful and void in the following respects:

(1) The Commission was without authority, either in law or in fact, to make the said order.

(2) There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally;

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for load at, and removal of loaded car from, point of loading, and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

(5) The evidence on which the order is based shows conclusively that the terminal allowance paid by the said defendant carrier to plaintiff is for a transportation service embraced within the service for which the defendant publishes, charges and receives the rates named in its tariffs filed with the Interstate Commerce Com-
16 mission; that the said terminal allowance is no more than just and reasonable and, being published in the tariffs of the defendant carrier, is just as binding upon the said defendant as is any rate named in its tariffs to be collected for the transportation of property by it in interstate commerce.

(6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant carrier in connection with the terminal allowance at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowance named in the tariff of the said defendant carrier is paragraph 7 of Section 6. As stated by Commissioner Mahaffie in his dissenting report (reproduced in Appendix A hereto), so long as the allowance is named in the tariff of the defendant it must be paid. The record wholly fails to show any violation of Section 6, Paragraph 7.

XIII

Further, plaintiff shows that prior to 1905 the question had arisen as to the Commission's power over allowances to shippers for services performed and facilities furnished by them for carriers subject to the Interstate Commerce Act. In its annual report to the Congress in 1905 the Commission said:

"Terminal roads, elevator charges, and private cars.

"There is an important class of cases in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like property. This may happen in any case where the shipper is the owner
17 of any of the facilities of transportation or performs any part of the transfer service. Such performance may take the form of an excessive division to a terminal road owned by the shipper, the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one shipper to another. It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under

the present system. Moreover, there are many instances in which the services can be rendered or the facility furnished more advantageously both to shipper and railway, and without injury to the public, if provided by the shipper itself. We do think, however, that the commission should be empowered, in a case of this kind, to determine whether the allowance to the property owner is just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Thereupon on June 29, 1906, 34 Statute 584, Section 1 of the Inter-State Commerce Act was amended so that the term "railroad" should include—

"all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight
18 depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

The section was further amended so that the term "transportation" includes—

"All services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration, icing, storing and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act, to provide and furnish such transportation upon reasonable request therefor."

Section 6 was amended so as to require the schedules of rates filed by carriers to "state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed." Section 6 was further amended by the addition of the following to Paragraph (7): "Nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15 was amended by the addition of the following paragraph:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and

19 effect and be enforced in like manner as the orders above provided for under this section."

The Commission has no power to prohibit said defendant carrier from employing plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by said defendant carrier to plaintiff for service and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of June 25, 1935, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

XIV

Plaintiff has handled, and will continue to handle for the said defendant carrier, loaded cars on which the terminal allowance payable to the plaintiff in accordance with the tariff of the said defendant carrier amount in the aggregate to not less than Three Thousand Dollars ($3,000) per annum. Unless the order of the Commission be set aside and the defendant carrier be required to withdraw its canceling tariff, plaintiff will be compelled to perform the transportation service of moving the empty and loaded cars from and to the points of loading and unloading to and from the rails owned by defendant carrier, for which transportation plaintiff will be compelled to assume an expense in excess of 90 cents per car more than if said terminal allowances were not canceled, amounting in
20 the aggregate excess to more than Three Thousand Dollars ($3,000) per annum, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiff is remediless in the premises at law, and relievable only in a court of equity, plaintiff prays that a preliminary or interlocutory order or injunction be entered, restraining and suspending the enforcement, operation, and execution of the said order of the Interstate Commerce Commission of June 25, 1935, until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the enforcement, operation, and execution of said order.

Plaintiff further prays that a preliminary or interlocutory order or injunction be entered, requiring the defendant railroad companies, to cancel the tariff herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission and suspending the cancellation of the terminal allowance now being paid plaintiff, until final determination of this cause; and that upon the final hearing herein a decree be entered perpetually enjoining,

suspending, annulling, and setting aside the said tariff, and requiring the said defendant carrier to file new tariff restoring the terminal allowance in effect on June 24, 1935, on interstate traffic handled by the plaintiff at its said plant in Destrehan, Louisiana, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of June 25, 1935, and to restore the status quo of June 24, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require
21 the defendant railroad companies, to vacate, annul, and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of June 24, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiff further prays, that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the defendants herein named, in the manner provided in the Acts of Congress, and your plaintiff will ever pray.

(Sgd) LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
1522 First National Bank Bldg., Chicago, Ill.,
Solicitors for Plaintiff.

Duly sworn to by John E. Monroe; jurat omitted in printing.

22 *Appendix A to complaint*

INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Submitted October 17, 1934—Decided May 14, 1935

Upon investigation into practices of carriers affecting operating revenues or expenses with relation to terminal service of Class I carriers by railroad, found that:

1. When a carrier is prevented from performing an uninterrupted service to the points of loading or unloading within the confines of an industrial plant because of some action or disability of the industry or its plant, the carrier's duty with respect to the delivery or

receipt of cars does not extend beyond the point of interruption or interference, and any allowance to the industry for performing the service beyond such points or the performance of service by the carrier beyond such points without proper charge is unlawful in violation of section 6 of the act.

2. At many industries delivery and receipt of freight is effected by carriers on interchange tracks because of interference or interruption to the work of both the industry and the carrier which would be encountered beyond such tracks. Under such circumstances, delivery or receipt on such tracks constitutes delivery or receipt under the line-haul rates.

3. When the spotting service at an industry requires a service in excess of that required in making simple placement or the equivalent of team track spotting, such service is in excess of that required of a common carrier under its line-haul rate, and any allowance to the industry for performing such service or the performance thereof by the carrier without charge over and above the line-haul rate is unlawful in violation of section 6 of the act.

4. The payment by respondents of allowances to individual industries for the performance of spotting service at the latter's convenience, or the assignment by respondents of locomotives to perform similar service without charge, dissipates respondents' funds and revenues, to be not in conformity with efficient and economical management as contemplated by the Interstate Commerce Act, and not in the public interest.

Sidney S. Alderman, Harry I. Allen, C. L. Andrus, B. S. Atkinson, Thomas Balmer, J. R. Barse, B. F. Batts, C. S. Beattie, Charles S. Belsterling, J. R. Bell, E. E. Bennett, L. J. Birch, Charles H. Blatchford, Elmer F. Blu, M. L. Blum, H. D. Boynton, J. R. Branley, G. P. Brock, William S. Bronson, C. W. Brosius, Clyde Brown, N. S. Brown, H. L. Burford, C. S. Burg, E. H. Burgess, T. H. Burgess, E. W. Camp, William D. P. Carey, E. G. Clark, A. F. Cleveland, F. A. Cleveland, A. J. Clynch, A. L. Coey, W. A. Cole, William W. Collin, Jr., William C. Combs, John F. Connors, John J. Danhof, L. B. da Ponte, A. G. Davis, J. N. Davis, Tom Martin Davis, W. E. Davis, W. G. Degelow, Ernest C. Dempsey, Robert F. Denison, T. F. Dooley, E. G. Dorety, George Cochran Doub, F. M. Dudley, Gerald E. Duffy, Fayette B. Dow, G. G. Earley, O. G. Edwards, A. H. Elder, Charles E. Elmquist, W. F. Everding, W. Hal Farr, George H. Fernald, Allister Fraser, J. A. Gallaher, F. M. Garland, P. F. Gault, T. D. Gresham, C. L. Groom, W. L. Grubbs, A. J. Grummett, August G. Gutheim, R. J. Hagman, E. J. Halberg, C. A. Halpin, M. Carter Hall, A. S. Halsted, Charles A. Hart, Henry J. Hart, Thomas P. Healy, Carl R. Henry, C. C. Hine, George W. Holmes, E. E. Horton, C. A. Hunt, George W. Imgrund, Bronson Jewell, Harry R. Jones, L. C. Jorgensen, F. A. Key, A. G. Kingsley, A. H. Kiskaddon, John B. Keeler, Jarvis Langdon, Jr., W. J. Larrabee, H. H. Larimore, A. H. Lossow, J. A. Lynch, James E. Lyons, Thomas H. Maguire, Andrew P. Martin,

Eldon M. Martin, James Martinbee, G. B. Mathews, Frederic D. McCarthy, H. H. McElroy, Walter McFarland, W. N. McGehee, L. L. McIntyre, C. B. McManus, Carleton W. Meyer, W. R. Middleton, Clark H. Miley, Clarence A. Miller, J. H. Miller, E. B. Moffatt, Frank H. Moore, A. R. Morton, P. K. Motheral, G. H. Muckley, John W. Murphy, H. T. Newcomb, George S. Nichols, E. R. Oliver, Guernsey Orcutt, George P. Orlady, Conrad Olson, R. S. Outlaw, James V. Oxtoby, R. G. Parks, W. F. Peter, Marion B. Pierce, Roy Pope, Horace H. Powers, Thomas L. Preston, C. M. Price, H. M. Quigley, J. T. Quisenberry, W. A. Rambach, L. C. Reddish, K. L. Richmond, W. A. Robbins, M. G. Roberts, Fletcher Rockwood, G. B. Ross, William R. Seaton, John C. Shields, H. D. Sheean, J. R. Skillman, F. V. Slocum, C. A. Smith, C. H. Smith, Dana T. Smith, Elmer A. Smith, J. M. Souby, H. V. Spike, B. H. Stanage, C. P. Stewart, W. J. Stevenson, James Stillwell, H. A. St. John, Edward F. Stock, William F. Strang, L. H. Strasser, C. C. Straub, O. E. Swan, G. M. Swanstrom, A. Syverson, J. H. Tallichet, M. W. Thomas, Robert Thompson, D. L. Tilley, F. H. Towner, William Jay Turner, John L. Tye, Jr., Arthur Van Meter, H. L. Walker, Fred L. Wallace, Charles R. Webber, R. E. Wedekind, M. J. Welsh, R. F. White, H. R. Wilkinson, Eugene S. Williams, Felix M. Williams, George Williams, Maurice Williams, W. K. Williams, L. F. Wilson, C. T. Wolfe, J. W. Womble, Frederick H. Wood, D. S. Wright, James F. Wright, J. C. Wroton, and D. Lynch Younger for respondents and other carriers.

G. T. Avery, Ernie Adamson, F. A. Allen, Harry I. Allen, C. O. Applehagen, Clinton S. Abbott, Charles J. Austin, J. R. Allen, R. C. Allen, A. G. Anderson, Baker, Botts, Andrews & Wharton, Thomas Balmer, H. H. Bascom, John W. Bingham, H. J. Bennett, T. E. Banning, W. J. Bailey, Wm. C. Boyd, F. C. Broadway, J. C. Beck, J. W. Brown, Clifford H. Browder, F. G. Buck, H. O. Berger, M. P. Bauman, George P. Boyle, John S. Burchmore, Nuel D. Belnap, Frederick E. Brown, T. H. Burgess, L. H. Brenner, J. E. Bryan, Fred B. Blair, Frank F. Bergstrom, D. L. Bennett, T. C. Burwell, George E. Clinton, W. Clive Crosby, Joseph W. Connolly, W. P. Coughlin, John R. Cochran, J. A. Coakley, J. E. Considine, R. B. Coapstick, J. P. Cassidy, W. G. Clayton, A. J. Clynch, Johnston B. Campbell, Willis Crane, Carl R. Cunningham, G. B. Cromwell, Calvin A. Campbell, Jr., Call & Murphy, William W. Collin, Jr., H. W. Chapman, F. H. Compton, H. J. Carey, L. W. Cobb, W. H. Chandler, Benjamin Conliff, William H. Connell, F. M. Crawford, A. W. Clapp, Cravath, de Gersdorff, Swaine & Wood, J. C. Davie, J. B. Dempsey, F. A. Dobber, Ralph H. Drake, Fayette B. Dow, W. H. Day, G. J. Durpey, Edward S. DePass, G. L. Dalton, Walter David, J. R. Davis, Floyd C. Davis, James F. Dougherty, R. H. Dunn, J. N. Deller, W. Burl Dalton, Wm. A. Dougherty, J. G. Dickson, E. W. Demarest, John C. Dunn, Arthur W. Dowds, Charles Donley, W. F. Everding, A. C. Ellis, Jr., H. S. Elkins, W. W. Eismann, R. Z. Eaton, R. A. Ellison, Charles

Ervin, William F. Ehmann, G. R. Farmer, E. T. Foxenbergh, S. L. Felton, Charles J. Fagg, W. B. Faulkner, C. L. Franklin, Harry D. Fenske, W. S. Foster, R. W. J. Flynn, G. E. Flanders, J. M. Fleming, W. H. Francis, C. C. Furgason, T. D. Geoghegan, Ludwick Graves, C. L. Groom, E. D. Grinnell, R. H. Goebel, Paul J. Gates, Robert B. Goodman, F. M. Garland, E. S. Gubernator, Byron M. Gray, Bernard L. Glover, W. D. Goble, A. G. Grim, Charles Gallagher, A. C. Graham, R. J. Hagman, C. A. Hart, G. B. Hetherington, C. Hershey, H. F. Hovey, Fred W. Haas, G. R. Hanks, Bryce L. Hamilton, W. H. Hooper, J. W. Holloway, C. E. Hochstedler, A. E. Hickerson, F. T. Horan, S. T. Henson, W. J. Hammond, W. T. Hancock, J. D. Hurst, James J. Hailey, J. P. Haynes, Wayne P. Hendricks, J. O. Houze, Henry Hauseman, E. M. Hayden, I. M. Herndon, C. R. Hillyer, F. S. Hollands, W. E. Heidinger, George F. Hichborn, J. K. Hiltner, A. C. Hultgren, E. M. Hodges, F. G. Ibach, H. Ignatius, E. A. Jack, J. W. Jamison, W. H. Johns, J. Jones, R. L. Jones, J. C. Husteson, George Jay, R. L. Korf, F. S. Keiser, Elmer J. Klebba, Kamper K. Knapp, H. H. Knight, Lee Kuempel, F. W. Kerr, John B. Keeler, Russell W. Krantz, A. R. Kennedy, Edward F. Lodwidge, T. A. L. Loretz, H. J. Lang, A. G. Linnemann, W. R. Lynch, S. C. Loughbridge, W. H. Lougheed, A. P. Lane, W. A. Latham, Arthur S. Lytton, Stanley M. Low,
27 H. H. Lucas, Wilbur LeRoe, Jr., C. A. Lahey, W. B. Lewis, J. S. Marvin, J. E. Monroe, H. D. McKnight, Kenneth A. Moore, Herman Mueller, A. King McCord, George W. Morgan, Lambert McAllister, R. H. McElroy, Parker McCollester, H. G. McNamara, John T. Money, T. M. Milling, F. R. McFarland, H. O. Mackinch, Robert Elmer Minton, C. C. Milliken, T. W. Mackey, T. J. McLaughlin, W. J. Mathey, Hoyt A. Moore, H. D. Musick, M. J. McMahon, E. W. McKay, Andrew P. Martin, James H. Myler, J. A. Maher, A. A. Mattson, Herbert H. Moffitt, Donald D. Moore, James McEvory, John W. Murphy, W. F. Morris, Jr., Earle J. Machold, D. T. Meyers, C. R. MacCarey, Charles W. Mays, H. E. McGiverson, E. L. Maynard, William A. Moore, J. P. Magill, W. M. Maddox, Harry J. Newton, W. J. Nokely, F. H. Nesmith, Cecil A. New, Norman, Quirk & Graham, C. Ohlsen, James V. Oxtoby, E. W. Owens, J. B. Orr, R. W. Ostrander, R. S. Otulaw, J. W. Porter, Richard Parkhurst, Stephen A. Power, F. A. Perry, F. E. Paulson, Philip H. Porter, W. H. Pease, W. H. Perry, R. W. Poteet, Robert E. Quirk, R. L. Reese, P. A. Ripley, W. J. Rowley, A. J. Radosta, Jr., J. L. Roberts, M. G. Roberts, Fred M. Renshal, John Rowe, G. B. Ross, Fletcher Rockwood, W. E. Rosenbaum, Frank E. Robson, R. M. Robinson, H. W. Roe, A. A. Raphael, M. C. Richards, C. R. Scharff, A. J. Sevin, Charles Schakell, A. H. Schwietert, G. M. Sherman, C. M. Shepherd, E. D. Sheffe, James J. Shaw, H. M. Slater, Samuel G. Spear, W. R. Scott, Marshall G. Sampsell, Walter F. Schulter, C. R. Seal, E. W. Sieboldt, H. R. Snyder, Leonard Simms, Charles W. Stiver, F. L. Sullivan, J. H. Shaw, C. A. Sullivan,

C. H. Sullivan, H. C. Schimmelman, R. O. Stevenson, G. H. Staat, W. D. Sankey, Jr., F. L. Stokes, Ned A. Stewart, Walter A. Smith, Hal H. Smith, Frank M. Swacker, C. T. Stripp, Elmer R.
28 Terry, Frank T. Towner, Herbert Thompson, G. F. Thomas, Lee W. Troutfetter, C. A. Talley, Clare B. Tefft, W. E. Tulley, J. H. Uptegrove, Arthur B. Van Buskirk, A. M. Van Denser, R. R. Veldman, E. H. White, Arthur L. Winn, Jr., C. E. Widell, Elmer Westlake, E. S. Wortham, J. K. White, A. C. Welsh, Frederick H. Wood, George E. Winters, William N. Webb, Edgar N. Wrightington, L. F. Weber, H. W. Wise, T. H. Wilson, Sheldon E. Wardwell, Leo F. Wormser, R. S. Waterbury, Warren H. Wagner, Wallace H. Walker, S. H. Williams, F. M. Wintermute, C. H. Winslow, E. L. Wilkerson, J. W. Watson, Chester L. Whittemore, Luther M. Walter, Charles H. Woods, and C. F. Young for various industries and associations.

29 REPORT OF THE COMMISSION

BY THE COMMISSION:

This is an investigation upon our own motion into practices of carriers affecting operating revenues or expenses, which for convenience was divided into different parts. Part II, being the instant part, relates to terminal service of Class I [1] carriers by railroad subject to the Interstate Commerce Act. It does not deal with allowances or divisions to industrial common carriers. Hearings were held at convenient points throughout the country. The record comprises evidence presented by carriers and shippers, and data called for by questionnaires. A proposed report was prepared by the director of our Bureau of Service, to which exceptions were filed by numerous parties, and the case was argued orally. The proposed report dealt with the practices at many individual industries. We will herein deal only with the legal questions and general situations presented. Separate reports will be issued covering the industries either individually or by groups.

Our inquiry first extended to various phases of terminal services including those covered herein and the practices of respondent carriers in connection therewith. No industries were heard. Thereafter further hearings were had at which industries were invited to be present and advised of the information to be sought at such further hearings. The principal questions to be determined, as indicated in the later notices, are as follows;

1. Whether such terminal services, in whole or in part—performed in placing cars at designated locations in positions accessible for loading and unloading—are services which the connecting com-
30 mon carriers, by operation of law, are duty-bound to perform. This question relates to three distinct methods of rendering such services, including:

[1] Carriers having annual operating revenues above $1,000,000.

Group A, where the industries perform these services and receive compensation therefor from respondent carriers.

Group B, where the industries perform the services and themselves bear the expense without compensation from respondent carriers, and

Group C, where respondent carriers perform the services at the special convenience of the industries.

2. Whether, in circumstances where such services are performed by the industries, any allowances made to the industries by connecting common carriers as compensation for such services, are lawful; also why, in similar circumstances, no allowances are made to other industries for performing such services.

The service rendered in placing cars on and removing them from team tracks and private sidings is well known. It consists of the placing of cars at or their removal from a point on such tracks reasonably convenient to both the carrier and the shipper. A description of the service involved on tracks of individual industrial plants will be dealt with in subsequent reports, but in general it may be stated as follows: The industries heard on this record have systems of tracks within their plants which vary in extent from a few tracks aggregating only a few hundred feet in length, to extensive systems many miles in length. These industries are served in one of two ways, i. e., inbound and outbound cars are delivered or received by the carriers on interchange[2] tracks which either compose
31 an extensive yard or designated tracks from and to which interchange tracks the spotting[3] service is performed by locomotives belonging to the industry served, for which service in many instances the industry receives an allowance from the carrier while in other instances such service is performed by the industry at its own expense; or by the other method the spotting service is performed by the carrier. In the majority of such instances the spotting is performed by the carrier at its convenience and without interruption or interference by the industry. In other instances cars are first placed by the carrier on interchange tracks from which they are subsequently moved by a carrier engine or engines assigned to the plant and operating entirely under the direction of the industry and spotted when and as needed by the industry without charge in addition to the line-haul rate or switching charge otherwise applicable. At the latter group of industries the services are substantially the same as at the industries where the spotting service is performed by plant power. This report will principally deal with the class of industries to which an allowance is paid by the carrier as compensation for rendering service which it is urged is within the obligation of the carrier under the line-haul rate, and those to

[2] By "interchange" yards or tracks, as used herein, is meant the yards or tracks where cars are delivered to or received from an industry by the connecting carrier. In most instances these yards or tracks are on property of the industry.

[3] "Spotting" or spotting service, as used herein, is the service beyond a reasonably convenient point of interchange between road haul or connecting carrier and loading or unloading locations on industrial plant tracks.

which the carriers assign power to perform the spotting service.

Many industries own and operate their own power in conduct-
32 ing the industrial operations and in the movement of cars in intraplant[4] service, for which latter service a charge would be collected if performed by the carriers. The industries are thus able to perform all switching service within their plants and coordinate the different services and avoid interference with their industrial operations to a greater degree than would be possible if the connecting carriers performed a part of the switching. Many plants are served by two or more carriers, and in such cases confusion between the carriers and interference with the industrial operations would result if locomotives of the carriers and the industry were switching within the plant at the same time. Very often the industrial operations do not require the entire time of a locomotive, which, however, must be kept available. If the idle time can be employed in performing a service which the carriers can be induced to pay for, a clear gain accrues to the industry. For these reasons the industries prefer to use their own locomotives and, in general, endeavor to secure an allowance for performing the spotting service.

Numerous other industries heard on this record use locomotives for the identical purposes and in the same manner, but receive no allowance therefor, although many of them have made attempts to secure payment for such services. Regardless of the carrier's duty or obligation, in all cases the industrial operations must have primary consideration, and for this reason many industries which have not sought, or have failed to receive, allowances prefer to operate their locomotives to avoid interference with plant operations, and no greater service is performed by the connecting carriers than delivering and receiving cars at convenient interchange points.

33 The published tariffs generally establish switching limits at the various destination points. Delivery within those limits is paid for when rates are collected to those destinations. In some cases the switching limits are definitely defined by boundaries, and at others the industries included within the switching district are named. There is no dispute that delivery at the various industries is covered by the published rate. The difficult thing is to ascertain when delivery at the plant is made. In the nature of things no inflexible formula can furnish a solution for that problem. The limitation of place within which delivery is due will vary with varying conditions. All that we can safely say is that there must be such a delivery as is customary and reasonable. Delivery by railroad is usually effected either at freight houses or other terminals, and deliveries are still made at such places where the factories and warehouses of shippers and consignees do not connect with the tracks. Private sidings have become common and freight is carried over them between the railroad and the plant. Such carriage is commonly regarded as a part of the work of transportation. In most cases

[4] Such movements as the plant requires in carrying on its operations and are not related to the delivery or receipt of cars.

the distances are short and the carrier's burden remains substantially the same whether the cars are left upon the siding close to the main tracks or hauled along the siding until they reach the plant. In such circumstances it may be said with reason that delivery at the plant means delivery at the platform for loading and unloading. The respondents have not withheld service incidental to carriage between the railroad and the plant. Cars have been hauled from the main line to agreed interchange tracks either within the limits of the plant or on tracks in close proximity thereto. These interchange tracks correspond to the spurs or sidings on which the practice of spotting had its origin. What many of the industries here insist upon is that the respondents must haul them farther over an intricate system of interlacing tracks and distribute them among the mills and warehouses not at the convenience of the respondents but in order to meet the industrial needs of the plant. We come then to the test, which, vague as it is, is the only safe one, that is, whether in the light of all the circumstances such a form of delivery is customary or reasonable. That it is not customary is tablished, we think, by uncontroverted evidence. Spotting cars upon short and direct sidings is a service that has little kinship to intricate maneuvers designed not to reach the industry but to permit the convenient distribution of wares among the subdivisions of the industry. The difference may be one of degree but here as is so often in the law such differences are vital. In many cases shown upon the record the complicated shifts and transfers are made by shippers or consignees within their own plants at their own cost and without an allowance from the carrier.

34

The tariffs publishing the line haul and switching charges constituting the carrier's holding out to all alike of service under such rates and charges do not in terms or by any reasonable construction provide for "plant switching" or "spotting of cars at unloading point" to be performed at plant's convenience.

During the period of years in which we have considered allowances, many cases dealing with spotting services, allowances to industries, and so-called plant facility railroads have been considered. Counsel of record filed a brief listing 164 cases which we have decided, and several have been decided since that brief was filed. Mony of these cases dealt with allowance or divisions of rates to industrial common carriers, which are not discussed herein. A number of these, such as the Industrial Railways Case, 29 I. C. C. 212, The Tap Line Case, 23 I. C. C. 277, and others, were considered on voluminous records. Rules have been promulgated by various carrier associations for the guidance of the carriers in the granting of allowances, but, being without binding force upon any individual carrier, they have been largely disregarded.

35

About 1920 a special committee of carriers operating in official territory made a study of the practices in that territory with respect to the spotting service. This special committee reported that the practices were irregular and inconsistent and demanded a remedy.

The committee believed that the formula by which the allowances were computed was incorrect, and resulted in unjustified expense to the carriers. It recognized that much of the service for which allowances were paid was service which was in excess of the carrier's obligations under their line-haul rates and proposed that a tariff be issued for account of the carriers in that territory. The proposed tariff contemplated that simultaneously all tariffs providing for allowances to industries for terminal service in spotting cars should be canceled, and it was stated: "The effect of such tariff would tend to reduce the amount of switching at present being accorded by carriers in spotting cars, which, as pointed out by the Commission in the U. S. Cast Iron Pipe & Foundry Company decision, is *in excess of their obligations.*" [Italics supplied.]

The proposed tariff provided that where spotting service could not be performed on private or industrial sidings by means of one
36 simple switching movement, a uniform charge should be applied for the remainder of the service; and that where an industry performed spotting service which was properly a carrier's duty, an allowance in an amount uniform to all such industries might be paid.

Due mainly to the opposition of the National Industrial Traffic League, the proposed tariff was never published. This record shows that the irregularities, inconsistencies and demand for remedial measures, which were found by the special committee to exist, still exist, and have since been greatly multiplied. As late as March 1931, the eastern carriers were attempting by change in their formula to obtain uniformity, and in August of that year one of the largest eastern railroad systems declined to grant an allowance to a certain industry solely on the ground that it was not an iron and steel industry, although at that time and for a number of years previously this system and its component lines had been granting allowances to many industries regardless of the nature of their business.

The futile efforts of the carriers in the past to obtain uniformity, and to limit allowances to services which are properly a part of their duty, offer no ground for belief that future efforts on their part will accomplish such objectives. That such conditions exist was recognized by the Congress in section 2 of the Emergency Railroad Transportation Act, 1933, wherein it is stated that "in order to foster and protect interstate commerce in relation to railroad transportation, by preventing and relieving obstructions and burden thereon resulting from the present acute economic emergency, and in order to safeguard and maintain an adequate national system of transportation," the office of Federal Coordinator of Transportation was cre-
37 ated. Section 4 provides that one of the purposes of that act is to control allowances, accessorial services, and the charges therefor, and other practices affecting service or operation to the end that undue impairment of net earnings may be prevented, and other wastes and preventable expense avoided. That emergency act

in no wise affected our power with respect to the practices involved in this proceeding. It emphasized, however, the necessity for this investigation which we had previously begun. Before discussing the general testimony, it may be helpful to consider the applicable legal principles as announced in the decisions of the courts and this Commission.

DISCUSSION OF THE APPLICABLE LAW

Section 1 (3) of the Interstate Commerce Act defines "transportation" to include all services in connection with the receipt and delivery of property transported, and paragraph 4 of the same section makes it the duty of common carriers to provide such transportation upon reasonable request therefor at just and reasonable charges. The carriers are not only entitled to reimbursement for the cost of rendering the service and a reasonable profit, Southern Ry Co. v. St. Louis Hay & Grain Co., 214 U. S. 296, but it is unlawful for them to transport property free, except pursuant to law. American Exp. Co. v. United States, 212 U. S. 522; Louisville & N. R. Co. v. United States, 282 U. S. 740.

Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish. Atchison, T. & S. F. Ry. Co. v. United States, 232 U. S. 199. A carrier may, 38 however, employ an agent to perform transportation service for it. United States v. Fruit Growers Express Co., 279 U. S. 363. And a carrier may receive services from an owner of property transported or use instrumentalities furnished by the latter, in which cases the carrier shall pay for them subject to the restriction that the compensation be no more than is reasonable. United States v. Baltimore & O. R. R. Co., 231 U. S. 274. These principles should be kept in mind in considering the discussion which follows:

Over a period of many years the courts and this Commission have had numerous occasions to consider the services which the carriers are obligated to render for the compensation they receive in the form of the line-haul freight rates. In Associated Jobbers of Los Angeles v. Atchison, T. & S. F. Ry. Co., 18 I. C. C. 310, 314, we said:

"The American railroad rate has always been recognized as covering the full service which the carrier gives—in furnishing the car, a proper place at which to load it, the conveyance of that loaded car, and its terminal delivery."

In that case the attack was made upon the charge of $2.50 per car made by carriers at Los Angeles, Calif., for delivering or receiving carload freight at industries located upon spurs or side tracks within their switching limits, when such carload freight was moving incidental to a line haul and the carrier receiving or delivering such freight received the whole or any part of the compensation for such line haul. In discussing the facts we pointed out that freight moving in carloads was delivered at team tracks, at freight sheds, or at industry spurs and that at team tracks and freight sheds no charge

was imposed for the receipt or delivery of such carload freight over and above the freight rates named in the tariffs, while at
39 industry spurs an additional charge of $2.50 was imposed on every loaded car moving in or out. We said further:

"These industry spurs vary in length, some leading directly from the main track into or alongside of the industries served, while others are of greater length and branch at one or more points, short spurs running off from what is known as the 'lead' to serve other industries in the immediate neighborhood."

In finding that the charge was illegal and unjust, which decision was upheld by the Supreme Court in the Los Angeles Switching Case, 234 U. S. 294, we said that the industrial spurs under consideration were of a totally different character and of a different nature from those considered in Chicago & A. Ry. Co. v. United States, 156 Fed. 558; Solvay Process Co. v. Delaware, L. & W. R. Co., 14 I. C. C. 246, and in General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237.

In the last case the General Electric Company asked that we determine and fix the just and reasonable sum that it might charge the carriers for services performed and instrumentalities furnished by it in connection with the interstate movement of its own property. The instrumentalities referred to were complainant's storage tracks which it had constructed, and the locomotives and electric motors which it owned and operated within the limits of its extensive plant at Schenectady, N. Y. The services which the industry claimed to perform consisted of handling the loaded or empty cars between the storage tracks where the cars were interchanged with the carriers, and the various shops, foundries, and other buildings where cars were ordinarily unloaded or loaded. Complainant asserted that its activities and equipment with respect to such movements were
40 services directly rendered and instrumentalities furnished by it in connection with the transportation of its own property within the meaning of section 15 (13) of the Act; and that it ought to have reasonable compensation therefor from the carriers. We said at page 242:

The real question before us is whether complainant, under the amended act to regulate commerce, may lawfully make any charge and demand any compensation from the defendants upon the facts shown of record. Is the service performed by it a carrier's service? Is it a part of the transportation undertaken by the carrier? Or is it a shipper's service—something apart from the transportation, and which is done by the shipper for its own benefit?

To that question we have given such thought and reflection as its importance demands, and our conclusion is that the handling of the cars by complainant within the inclosure of its plant has not been shown to be a carrier's service—something done by the complainant which the carrier ought to do as a part of its contract of transportation—but that the storage tracks and switch tracks and all the arrangements and facilities for moving cars within its plant inclosure

are for the complainant's own convenience and are necessary to the economical conduct of its business.

While the defendants now spot cars within the switching districts of cities and towns on their respective lines, such service amounts practically to no more than placing the cars upon sidetracks. The switch tracks leading to industries served by the defendants in the great majority of cases are from 400 to 500 feet long. In all cases the defendants reserve the right to use such tracks for storing cars when that can be done without inconvenience to the industries
41 to which they lead. And at all times both companies reserve the further right to pass over such tracks to make deliveries to industries beyond. There is, therefore, in a measure a joint ownership of the tracks or a joint right in the use of them, and to that extent they may be said to be system trackage. It is on such tracks that the defendants customarily spot cars free of charge. With an engine already coupled to a car, it involves no appreciable additional cost and no appreciable delay to put the car at the leg of an elevator or at the door of a warehouse instead of merely running it onto the sidetrack far enough to clear the main line. And such switching can be done at the reasonable convenience of the carrier. But here we have within the complainant's inclosure an elaborate system of broad-gauge switching tracks 12 miles in length operated both by steam and electric power and a narrow-gauge system 7 miles in length operated by electricity only; and on both systems a very extensive, purely internal switching is conducted by the complainant with its own motive power and crews. The defendants have no right to make any use of those tracks. They are not system tracks even in the qualified sense above mentioned, but are the exclusive tracks of the complainant. And the switching can not be done by the defendants at their reasonable convenience and whenever an engine is at hand to do it, but only at such time and in such manner as will not interfere with the complainant's switching engines and crews. In our judgment, in such cases a carrier has performed its full duty under its contracts of transportation when it delivers or ac-
42 cepts cars at some reasonably convenient interchange point, such as the storage tracks heretofore described that were constructed for that purpose by the complainant.

The matters there in controversy before us were litigated anew in New York Central & H. R. R. Co. v. General Electric Co., 219 N. Y. 227, 114 N. E. 115. In its opinion the Court of Appeals of New York at pages 117 and 118 said:

The decisive question must therefore be whether the switching done by the defendant within its plant between the storage tracks and the platforms of its mills is work that the plaintiff was bound to do as a part of transportation. To put it in another form, the question is, Where does transportation begin and end? The published tariffs to Schenectady establish switching limits extending from Sandbank to Carmen and Stony Lane. Delivery within those limits is paid for when rates are collected to Schenectady. Since

the limits embrace the defendant's plant, there is no dispute that delivery at the plant is covered by the rate. The difficult thing is to ascertain when delivery at the plant is made.

* * * * * * * * *

* * * Industrial spurs, within the switching limits designated by the carrier, are to be regarded, indeed, for many purposes, as an extension of the terminals. Los Angeles Switching Case, 234 U. S. 294, 34 Sup. Ct. 814, 58 L. Ed. 1319. But reasonable delivery does not involve the carrier's cooperation in the division of labor and of functions between the sections of a gigantic plant. This network of tracks is and must be under unified control. Order and method must reign. * * * The engines that move
43 within this plant are not doing work that the plaintiff ought to do, or effectively could do. They are doing the defendant's work. They are "plant facilities."

The Court had earlier said at page 117:

Transportation includes delivery. Under the plaintiff's published tariffs it does not include the work of loading and unloading. Official Classification, 38, Interstate Commerce Commission. But whatever is essential in order to complete delivery, the carrier must do. That is what it is paid for when it collects its regular rates. If it fails to make delivery, and the consignee through its own instrumentalities completes the work, an allowance is due. Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, 32 Sup. Ct. 22, 56 L. Ed. 83; United States v. B. & O. R. R. Co., 231 U. S. 274, 293, 34 Sup. Ct. 75, 58 L. Ed. 218. But no allowance is due for service rendered by the consignee after delivery has been made and transportation is at an end. An allowance in such circumstances would constitute an unlawful rebate. That is true of interstate shipments under the laws of Congress. Act to Regulate Commerce (Feb. 4, 1887), 24 Stat. L. 379, secs. 2, 3, 17; Act of Feb. 19, 1903, 32 Stat. L. 847; Act of June 29, 1906, 34 Stat. L. 584. It is true of intrastate shipments under the laws of New York. Public Service Commissions Law (Laws 1907, c. 429), secs. 31, 32.

The distinction between plant facilities and true agencies of transportation has been expressed by us in numerous decisions. Thus in Brimstone R. & Canal Co. Excess Income, 189 I. C. C. 437, decided January 27, 1933, Division 1 said at page 455:

It is the carrier's contention that the switching from the
44 hold tracks to the loading tracks and vice versa, is a common-carrier operation performed by it as a part of its transportation obligation and is comprehended within the rate division received by it. On the other hand, our interested bureaus contend that those switching operations are conducted for the convenience of the sulphur company and that the costs thereof should be allocated to plant expenses and not to carrier operating expenses. The evidence in this case, so far as these tracks and operations thereover are concerned, is substantially the same as that considered by us in Divisions

Received by Brimstone R. & Canal Co., 88 I. C. C. 62, 69, where we said:

Where the facilities of an industry are so constructed that delivery at its plant is rendered impracticable, the duty of the carrier is fulfilled if it holds itself out to receive and deliver on a convenient interchange track. General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237. The service of the proprietary company—(Union Sulphur Company)—in moving cars from the storage tracks to the sulphur bins and returning such cars, loaded, to the storage tracks, is no part of the common-carrier operations of the Brimstone.

We reaffirm that conclusion, and hold that the storage or hold tracks were a facility used as a convenience of the sulphur company; that the delivery of inbound empty cars thereon or on the loading tracks terminated the common-carrier obligations of the carrier so far as inbound empties were concerned; that on outbound shipments of loaded cars the common-carrier transportation commenced only when the cars were delivered to the carrier for final movement to
45 destination; that the intermediate switching between the hold tracks and the loading tracks was a plant service; and that the expense of such switching should not be included in railway operating expenses. In arriving at this conclusion we have not overlooked our decisions in other cases cited by the carrier, which we find clearly distinguishable on the facts as well as on principle.

The question whether or not there is an additional service is connection with industrial spur tracks upon which to base an extra charge, or whether this is merely a substituted service, which is substantially a like service to that included in the line-haul rate, is a question of fact to be determined in each case.

We have considered many cases involving the question of allowances under section 15 (13) to shippers for instrumentalities and services rendered in connection with the handling of cars to, from, and within industrial plants. The decisions in most of those cases did not go to the merits of the allowances, as such, but were founded upon the provisions of either section 2 of the act prohibiting unjust discrimination, or section 3 of the act, prohibiting undue prejudice or preference. The findings in Allegheny Steel Co. v. Director General, 60 I. C. C. 575, 578, may be taken as typical of the findings in such cases. We there said:

The facts of record are not deemed such as to support a finding of unreasonableness, but we find that in respect of interstate carload traffic moving between the trunk line and loading and unloading points within the limits of complainant's plant, the failure of the defendants to perform the switching and spotting service with their own motive power, or to make an allowance to complainant covering the cost of that service performed by it does and will for
46 the future subject complainant to unjust discrimination as between it and similarly situated competitors in the Pittsburgh rate district for whom such services are performed by the

defendants without additional charge or to whom allowances are made for the performance thereof.

It was left to the discretion of the carriers to determine how the unjust discriminations or undue preferences were to be removed, and they generally complied by granting allowances to the complaining industries. These cases are therefore of little or no assistance in considering the broad question whether the services performed by the industry and for which an allowance is paid by the connecting line are, as a matter of fact, transportation services which the carriers are obligated to perform, or whether such services are plant services.

In a relatively few cases the question of such allowances has been considered upon its merits. In United States Cast Iron P. & F. Co. v. Director General, 57 I. C. C. 677, the industry sought an increased allowance for spotting cars within its plant. In the course of its opinion, holding that the propriety of an increased allowance had not been demonstrated Division 2 at page 681 said:

A carrier is ordinarily under a legal obligation to effect delivery under a transportation rate. The nature and extent of delivery of carload traffic has differentiated with the increasing complexity in the development of industrial enterprise. Perhaps the most common, if not the standard, form of delivery for carload freight is the setting of a car on the so-called team tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and a substitute for team-track delivery is the
47 switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main track. It is indisputable that the trunk line carrier may be required to perform these or equivalent services of delivery without charge in addition to the transportation rate, or, if it choose, may employ an agent to render the service for it. This agent may be the shipper or owner of the property transported, with the limitation that the charge or allowance for the service may be no more than just and reasonable.

* * * * * * *

Switching allowances to large industries have developed in certain parts of the country until in many instances they are little better than undue preferences, and represent service which we would, *ab initio*, long hesitate to direct a carrier to render in effecting delivery of carload freight. They are, without doubt, frequently compelled by the fear of loss of large tonnage; they deplete unnecessarily the revenues of the carriers and thus tend to shift the burden of paying for such expensive deliveries from the shoulders of the recipients, where it belongs, to the shoulders of other shippers who receive only average delivery service.

This case was cited with approval and followed in Lehigh Portland Cement Co. v. Director General, 62 I. C. C. 231; Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, and Terminal Allowance to St. Louis Coke & Iron Co., 85 I. C. C. 591.

In Columbia Mills v. Delaware, L. & W. R. Co., 118 I. C. C. 112, Division 1 found that the failure or refusal of the carrier to
48 compensate complainant, out of the line-haul rates, for the services performed by the latter in switching carload shipments between points within its plant and the point of interchange with the carrier, and in checking, weighing, loading, and unloading less-than-carload shipments delivered to or forwarded from the plant in trap cars, was not shown to violate any provision of the act.

On behalf of the National Industrial Traffic League and others, it is urged that the decision in Car Spotting Charges, 34 I. C. C. 609, should be regarded as finally decisive upon the proposition that freight rates cover the entire transportation service; and that the so-called spotting service is included in the line-haul rate by practice and custom and under legal decisions. This case was decided July 6, 1915, and that it is not finally decisive of the various questions presented in the instant proceeding is demonstrated by the many decisions rendered upon similar questions during the 20 years which have intervened. In that case we considered the propriety and reasonableness of a tariff charge for placing cars upon industry spurs or private sidings, or upon the tracks of industrial plants, at convenient points for loading and unloading, and for the movement incident thereto, over the track or tracks of the industry. As defined in the suspended tariffs there under consideration, the charge was to cover the following service:

"Spotting" or spotting service, as used herein is the service beyond a reasonably convenient point of interchange between road haul or connecting carrier and industrial plant tracks, and includes:

(a) One placement of a loaded car which the road haul or connecting carrier has transported, or

49 (b) The taking out of a loaded car from a particular location in the plant for transportation by road haul or connecting carrier.

(c) The handling of the empty car in the reverse direction.

The industries to which the charge was to be applied were divided generally into three lists: (1) industries having industrial plant tracks connecting with the tracks of the carriers on which industrial tracks the carriers had performed spotting service in the past, and upon which they would, if desired, have continued to perform such service on and after the effective date of the tariff at the charge provided therein; (2) industries having industrial plant tracks connecting with the tracks of the carriers upon which industrial tracks the industry had performed the spotting service in the past. The charge of the carriers for performing spotting service for the industry on its plant tracks connecting directly with the tracks of the carriers would have been as per the tariff in question provided the performance of the service by the carriers was shown to be practicable and was agreed upon. The third was a list of industrial railways and provided that spotting service on or over the tracks of those railways could be performed only by special agreement.

As we pointed out, in general the industries were arbitrarily selected, and ranged from the ordinary mill or factory with a single spur or private siding to the large iron and steel industries having an interior system of rails called the plant railway. On page 616 we referred to our finding in the Los Angeles Switching Case, supra,

that where the service was merely a substitute for team-track
50 receipt and delivery the line-haul rate covered the service for the reason that rates generally in this country had been constructed upon that basis. We then stated:

The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. Indeed, there is testimony tending to show that by reason of greater density of traffic and greater tonnage the cost of spotting at the larger industries is less per car than at the smaller industries. At the large industries the trunk line may render interplant services in the movement of cars from place to place within the plant during the processes of manufacture which it has no occasion to render at smaller industries, and for such services an additional charge should be made; but where the service rendered is merely a substitute for the service which would be required if the movement were to or from a team track, an industry spur, or a private siding, nothing should be added to the charge for the line haul.

On page 618 we said:

There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified, but the mere fact that an

industry is complex, or that it requires an interplant service
51 in addition to the receipt and delivery of carload freight, is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight. The line-haul rate, however, covers only one placement of the car for loading or unloading, and an additional charge should be made for each additional placement of the car for that purpose.

We found that respondents had not justified the tariffs under suspension but stated:

The respondents may, however, file new tariffs, providing for spotting charges in those instances in which the terminal services performed exceed the services which under established custom is, (*sic*) or should be, performed for the line-haul rate, in accordance with the views expressed in this report.

The carriers took no action to comply with our findings other than to cancel the tariffs under suspension.

The Car Spotting Case should be considered in connection with the Second Industrial Railways Case, 34 I. C. C. 596, which was decided five days before the former case and immediately precedes it in the bound volume. In that case we divided the industrial operations into six groups. Our discussion of the last of these groups, appearing at pages 607–8, is particularly pertinent here. We said:

The sixth group is composed of industrial plant tracks which are neither owned nor operated by common carriers and are not dedicated to public use, the ownership and right of use being in the controlling industries which operate them. They ask that allowances be paid them out of the locality basis of rates under
52 section 15 of the act, upon the theory that they are performing a service of transportation which the trunk line is obligated to perform under the rate structure. This question was considered in the General Electric Co. and Solvay Process Co. cases, supra, and it is not necessary to enlarge upon it here. These cases illustrate the passing of the necessity for that provision of section 15 under which shippers may be compensated by the trunk lines for their facilities used in the handling of their own shipments. This legislative measure was enacted to give this Commission the means of eliminating certain unjust discriminations. The gradual elimination of discriminatory practices by other processes leaves this provision of the law to be used as a cloak for various payments which but for it would be looked upon as rebates.

Certainly it cannot be said that we have found that the transportation service which a carrier is obligated to perform under a line-haul rate includes the placement of the car at the point of loading or unloading in all instances and under all circumstances.

It is also urged that the statement of the court in New York Central & H. R. R. Co. v. General Electric Co., supra, that "a railroad's duty to carry is a duty to carry over its right of way" is diametrically opposed to the Supreme Court's conclusions in Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, and in Mitchell Coal & Coke Co. v. Pennsylvania R. Co., 230 U. S. 247. We do not agree that this is correct. The service involved in the Diffenbaugh case was that of elevation, and the court held that "As the carrier is required to furnish this part of the transportation upon request, he (Peavey)[5] could not be required to do it at his own expense, and there is nothing to prevent his hiring the instrumentality
53 instead of owning it. In this case there is no complaint that the rate out of which the allowance is made is unreasonable, and it is admitted that three-quarters of a cent barely would pay the cost of the service rendered without any reasonable profit to Peavey & Company for the work." In the Mitchell case, the court

[5] Parenthetical insertion ours.

said "to pay shippers for doing their own work would have been a mere gratuity, and if here the carrier was not bound to haul from the mine it had no more right to pay these companies for bringing their coal over the spur track to the junction than it would have had to pay a merchant for hauling his goods in a wagon to the railroad depot," and it said further "Inasmuch as this rate included the haul the Railroad was bound to transport the coal from the mouth of the mines, and could use its own engines for that purpose or it could employ the Coal Companies to render that service, paying them proper compensation therefor." There is no conflict between the language of the court in the General Electric case and the Diffenbaugh and Mitchell cases.

In National Industrial Traffic League v. Aberdeen & R. R. Co., 61 I. C. C. 120, 123, we said:

The demands upon a carrier which lawfully may be made are limited by its duty. Gt. Northern Ry. v. Minnesota, 238 U. S. 340, 346. But it is not its duty as a common carrier to enter into a contract to lease a railroad siding to a shipping or to enter into an agreement to operate privately owned sidetracks. The liability clauses complained of do not involve the question of rates, nor the matter of facilities to be furnished by the railroad company for the transportation of property under its obligation as a common
54 carrier, and section 1 does not confer upon us the power to pass upon liability classes of leases or of agreements for the maintenance, use, and operation of such individual sidetracks.

And in American Fuel Co. v. Atchison, T. & S. F. Ry. Co., 123 I. C. C. 101, 112, we said:

Service over private tracks or plant-facility tracks by a common carrier subject to our jurisdiction is neither compelled nor prohibited under the interstate commerce act. To furnish it or withhold it is within the discretion of the carrier. In either event the statutory inhibition against unjust discrimination or undure prejudice must be observed. Moreover, where, as here, the defendants have elected to perform the service they should publish tariffs to cover it.

To the same effect are the decisions in Transfer in St. Louis and East St. Louis by Dray and Truck, 155 I. C. C. 129; King Stone Co. v. Chicago, I & L. Ry. Co., 160 I. C. C. 245; and Winnsboro Granite Corp. v. Southern Ry. Co., 176 I. C. C. 481.

If a carrier operates over private industrial tracks it is because in its discretion it elects to do so, and its legal obligation in such operations extends no farther than is covered by the compensation it exacts for the services performed. In other words the obligation upon the carrier in such circumstances is to be measured by the compensation received and not by any definite duty otherwise placed upon the carrier by the statutes. The payment by the carrier to a shipper for rendering services upon private tracks which are not contemplated by the charges of the carrier would be "a gift—a rebate—a thing ipso facto illegal and prohibited by the statute"

* * *. Mitchell Coal & Coke Co. v. Pennsylvania R. Co., supra. Further, the rendition by the carrier of such services as are
55 not contemplated by the compensation which it receives free and without additional charge is prohibited by section 6 of the act. American Exp. Co. v. United States, supra; Louisville & N. R. Co. v. United States, supra.

As previously stated, whatever transportation service or facility the carrier is required to supply it has a right to furnish. Atchison, T. & S. F. Ry. Co. v. United States, supra. When a carrier is prevented from performing the service by the election of the industry to perform it, and when the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, the carrier's duty to perform the service under the line haul rate is discharged, and there is no obligation resting upon it to make an allowance to the industry for performing the service. Allowances to Texas Gulf Sulphur Co., 96 I. C. C. 371.

When a shipper seeking an allowance for performing a carrier service within its plant makes no demand of the trunk lines for performance and the carriers could not perform such service with available equipment because of excessive track curvature, any inequality which occurs because the shipper's competitors receive for the line-haul rate a service similar to that for which it requests an allowance is due to the position which it has assumed rather than to undue prejudice which the carrier could be required to remove. United States Cast Iron Pipe & Foundry Co., Inc. v. Director General, 62 I. C. C. 339.

If the shipper, for its convenience, prevents the carriers from performing the final placement of cars by a single movement, the carriers need not absorb the costs of switching from points of interchange to points of placement within the plant, when performed by the shipper. Marting Iron & Steel Co. Case, 48 I. C. C. 620.

56 No legal obligation rests upon a carrier to perform switching and spotting service solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them, but is not permitted to do so by the shipper. Stewart Furnace Co. v. Pennsylvania R. Co., 68 I. C. C. 528.

In the Industrial Railways Case, supra, we found and concluded with respect to certain industries listed on pages 236 and 237, that all the service by the line-haul carriers beyond a reasonably convenient point of interchange between the rails of the carrier and the rails of the industry, either within the plant or without the plant, was a shipper's service and not a service of transportation which the line carriers may perform without charge or may allow for out of the rate through divisions or otherwise when performed by the industry or by its industrial railroad, and that the facilities used by the industry in performing these services, whether separately incorporated or not, were plant facilities and plant equipment. We concluded and found that the delivery of a car by a line carrier

upon the interchange track was a delivery to the industry, that the line carriers were not compensated in their rates for services beyond that point, and that the allowances therefor were unlawful rebates paid for the traffic, and when performed by the line carriers were unlawful rebates in service, paid for a like purpose. In the supplemental report in that case, 32 I. C. C. 129, which followed the decision of the Supreme Court of the United States in the Tap Line Cases, 234 U. S. 1, we modified our findings in the first report with respect to industrial common carriers so as to comply with the decision of the court. There is nothing in the supplemental report which overrules in any particular the findings in the first
57 report with respect to the payment of allowances to industries for performing their own plant service. In fact, we stated that:

* * * The General Electric Company case, supra, the Solvay Process Company case, supra, and the Crane Iron Works case, 17 I. C. C. 514, were decided upon the facts, circumstances, and conditions appearing in connection with each. Those cases, however, differed from the Tap Line cases and from the instant case in that in each of the former cases the industrial railway, or the industrial corporation which in fact or effect owned it, sought to have us require the trunk line roads to accord the industrial roads allowances or divisions which the trunk line roads were unwilling to accord and which they contended would be unlawful.

We then stated:

We think that in the light of the decision of the Supreme Court in the Tap Line cases it is our duty to so modify our findings in the original report herein as to permit the trunk line roads, if they so elect, to arrange by agreement with any of the industrial roads mentioned in our former report which are common carriers under the test applied by the Supreme Court in the Tap Line cases, and which perform a service of transportation, for a reasonable compensation for such service in the form of switching charges or divisions of joint through rates.

In the Second Industrial Railways Case, supra, we said at page 601:

If the service in any instance is a plant service the trunk line carriers can not lawfully compensate the shipper itself, or indirectly through its incorporated plant railroad, for the use of its plant tracks or for switching the shipper's cars over them with its own motive power.

58 In Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., 270 U. S. 260, the Supreme Court in affirming the opinion of the Supreme Court of Appeals of Virginia, 138 Va. 647, 123 S. E. 352, stated:

The service of spotting cars was included in the line haul charge under both interstate and state tariffs.

It is urged on brief and exceptions that this expression of the court is conclusive in all cases that the service of spotting cars is

included in the line-haul rate. The facts as shown by the decisions of the courts are that during the World War the defendant contractors were constructing embarkation facilities at Newport News, Va. Large quantities of material for use in such construction were delivered by the C. & O. at that point, and there was great traffic congestion in its railway yard. Because of this and other activities growing out of the war, the railway was unable to deliver goods or freight to the contractors within a reasonable time so that the latter's building operations were greatly impeded. To remedy this condition the C. & O. by contract assigned an engine and crew to the exclusive use of the contractors' traffic, payment to be made therefor as prescribed in the contract. The contractors later refused to pay for such service and action was brought to recover under the contract. In its decision the lower court said:

It is perfectly clear under the tariffs on file that the line haul rates on these cars entitle the consignees to have them "spotted" or placed upon these private delivery sidings to be unloaded. As expressed by the witness Ford, the consignee was entitled to *one placement of the car on a track agreed* upon by the railroad and the
59 party owning the commodity, which would either have to be a general delivery, public delivery you might say, or private industrial siding. That this expresses the true construction of the applicable rate which was published and filed is conceded. [Italics ours.]

Comparison was made by the Supreme Court of the service covered by the C. & O. tariff, with that considered in Car Spotting Charges, supra, and in Downey Ship Building Corp. v. Staten Island Rapid Transit Ry. Co., 60 I. C. C. 543. In the Downey case Division 2 at page 547 defined the carrier's obligation as involving "only one placement of a car and the movement to be made without interference and over the trackage suitable for the service."

The Supreme Court further stated:

The service by special engine and crew contracted for and given was not spotting solely for the convenience of the shipper. It was the spotting service covered by the tariff. * * * The carrier is here seeking compensation in excess of the tariff rate for having performed a service covered by the tariff. This is expressly prohibited by the Interstate Commerce Act. * * * A contract to pay this additional amount is both without consideration and illegal. * * * To so assure performance to a shipper was an undue preference. Hence the contract would be equally void for illegality on this ground.

Expressed differently, it would be unlawful for a carrier to contract to perform a preferential service. There is nothing in the decision of the court to indicate that the service contemplated by the line-haul rate was in excess of simple switch placement or in excess of team-track spotting. We think it is beyond question that

by the operation of their own locomotives with payment therefor by respondents, or by the assignments by respondents of
60 engines and crews for the exclusive service at specified industries heard on this record, such industries secure a superior and preferential service, and one which is not afforded by the carriers in the performance of ordinary operations to shippers who neither own nor have locomotives assigned for their exclusive use. See Riter-Conley Mfg. Co. v. Director General, 58 I. C. C. 327, 330.

Nor can it be overlooked that there is a financial gain to industries which utilize their own locomotives in securing for themselves this superior convenience regarded by the Supreme Court as a preferential service. In the practical application of the carrier's rules for determining the amount of allowances to industries, it must be understood that in making cost studies at the plants herein considered the locomotive service is performed in a manner most convenient to industrial needs. As many movements are made between the interchange tracks and the points of unloading or loading as the industrial operations require, and the number of engine hours devoted to this service is taken into account in determining the cost to the industry upon which the allowance is based. Respondents pay for such service to the advantage of the industry from both a financial and a service standpoint. The assignment of locomotives by carriers for use by industries under the latter's direction and control likewise results in a superior convenience and preferential service.

To summarize it is well settled that carload freight may be delivered or received by carriers upon a private industrial siding. Under general custom and practice the line-haul rate entitles a consignee to have his shipment delivered at a reasonably convenient place, whether this be within a plant, or upon a track agreed
61 upon by him and the carriers. See Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., supra, the case affirmed by it, and cases cited therein. See also Industrial Railways Case, supra. It is likewise clear from these same authorities that service beyond such reasonably convenient points is not a service which the carrier is obligated to perform or pay for under its line-haul rates.

Section 6 (7) provides that no carrier shall "charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith, between the points named in such tariffs, than the rates, fares, and charges which are specified in the tariff filed and in effect at that time." A further provision is that no carrier shall "refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are specified in such tariffs."

The statute prohibits every method of dealing by a carrier by which it directly or indirectly charges less than the published tariff

rates. In the absence of a tariff provision, for a carrier to assume under its line-haul rates an obligation which is not properly includible under such rates is clearly in violation of section 6 of the act, and necessarily preferential. As said in Davis v. Cornwell, 264 U. S. 560, citing Chicago & A. R. Co. v. Kirby, 225 U. S. 155: "It was not necessary to prove that a preference resulted in fact. The assumption by the carrier of the additional obligation was necessarily a preference.".

62 VARIOUS ATTITUDES OF CARRIERS WITH RESPECT TO ALLOWANCES

For about 25 years we have considered cases involving the payment of allowances to industries for the performance of their terminal switching. The earlier cases involved industries in the eastern industrial sections, and allowances gradually became more numerous in that part of the country until about 1915. Their spread in Pennsylvania and Ohio was more rapid after the end of Federal control. In 1921, the first important allowance was granted in the Illinois-Indiana industrial region, and others rapidly followed extending into the lower part of the Mississippi Valley west of the river where allowances had previously been made to certain lumber companies as a result of the Tap Line Case, supra. Some allowances have been granted in the north central and extreme northwest sections and at present the only sections of the country where allowances are not paid are New England, the Southeast and the extreme Southwest.

The New England carriers maintain the position that allowances are improper; that if an industry specifies a yard or location where cars are to be interchanged, the placing or receiving of the cars at such location constitutes delivery or receipt by the carrier under its line-haul freight rates; and that a further movement by industrial locomotives is a matter of internal arrangements of such industry and is no concern of the carrier.

Nearly all of the carriers south of the Potomac and Ohio rivers and east of the Mississippi have from the beginning resisted the payment of allowances. One of the vice presidents of a large
63 southern carrier stated the position of his company with reference to such payments substantially as follows: Speaking of a steel plant that had grown from a small industry through many years' operation, to a large industrial plant, he explained that in the beginning, the plant had required only a small amount of switching, which was then performed by carrier locomotives. The growth of the industry later required the constant service of one, then three locomotives which were operated and controlled by the industry. At the time the constant service of the first locomotive was required for the plant's needs, the carriers considered its obligations under the line-haul rates ended when cars were interchanged at reasonably convenient points, and thereafter performed no further service beyond such points. His testimony indicates recognition that a line of demarcation exists between the services included in transportation

and those included in the industrial operations of a plant, and shows that this line should be drawn at the point where the carrier is prevented from performing at its ordinary operating convenience any further service, by the nature, desires or disabilties of a plant.

The position of this carrier is illustrative of that of the southern carriers generally. By maintaining this position these carriers have largely avoided discrimination, confusion, and the wasteful dissipation of their funds and revenues, which this record clearly shows in many cases result through the performance by carriers without charge of services in excess of their obligation under the line-haul rates or the through payment of allowances to industries when they performed the spotting service.

64 RULES PROMULGATED BY CARRIERS FOR COST STUDIES

In the earlier allowances there appears to have been no uniform rule or definite formula in general use by the carriers in arriving at the cost to the industry for performing the service for which the allowance was paid. This condition existed until 1915. In Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 415, decided December 23, 1915, we announced certain principles which should govern in making allowances to industrial common carriers.

Following the principles there set forth certain formulas were evolved to compute costs to an industry where it performed the terminal switching service, which eventually were embodied in a printed circular. The first four paragraphs of this circular and the rules particularly pertinent to this report are reproduced as appendix A hereto.

The rules set forth in the circular were exhaustive, providing among other things, for the appointment of committees for the receipt of applications for, and consideration and disposition of allowances; for conducting cost studies by an accounting committee to determine the proper amount of an allowance; for methods to be used in making such studies, including the apportionment of time to be charged to the carrier or the industry, and the amount to be allowed for interest and depreciation on locomotives provided by industries; and the definition of certain terms, as well as setting forth a partial list of what should be considered as plant interruptions or interferences which terminated the carrier's transportation
65 service. These rules clearly indicate the attempt of the carriers to establish a line of demarcation separating transportation services from industrial services.

Slight variations occur in the various freight associations with respect to the applications for and consideration of allowances. In central territory the industry desiring an allowance makes application to the carriers serving it. This application is referred to the general committee consisting of traffic managers of the carriers embraced in that territory. The general committee places the applica-

tion in the hands of the terminal allowance committee, which after analyzing the proposal, if nothing is found objectionable, calls upon the accounting committee to make a cost study. The result of the cost study should determine the amount of the allowance to be granted, but in many cases the results of the study have been disregarded. Practically the same procedure is followed in the trunk line association.

Since 1923 the western trunk line association has maintained a similar organization for the handling of allowances, and an additional legal committee to which the proposed allowances are referred for an opinion as to the legal phases involved. In all cases final judgment is reserved for the traffic executive committees of the respective associations should their consideration be necessary. The associations' committees have only recommendatory powers in any case, and the individual carriers affected always retain the right of action in making or failing to make an allowance.

The rules reproduced in the appendix were to some extent later modified, but these modifications will not be described in detail as the record deals principally with allowances made while the methods embodied in the circulars previously described were in force.

66 THE PRACTICAL APPLICATION OF RULES FOR MAKING ALLOWANCES

The first part of paragraph (3) 2 (c) of appendix A reads as follows:

The Interstate Commerce Commission has held that switching services by a plant facility for account of a carrier must not exceed the equivalent of team track or simple switch placement. If no unusual or marked difficulty of operation in a plant is presented, the service may be considered not in excess of a simple switch.

This part of the paragraph is included in the formula used in western trunk line territory, but the formula of the latter also contains the following sentence: "Any service in addition to that shall be at the expense of the industry."

This rule coincides with our conception of a carrier's duty with respect to the delivery and receipt of freight.

In the formula adopted in eastern territory, but not in that used in western trunk line territory, the following also appears:

If the plant requires some unusual, complicated, or extensive switching service in comparison with other plants of substantially the same type (but not necessarily of the same output), in the same vicinity, it shall be held that the service is in excess of a simple switch, and no allowance shall be made.

A diligent but unsuccessful effort was made to determine from officials of the committees, and other witnesses, the reason for the inclusion of the last sentence in paragraph (3) 2 (c). As written

it is confusing, contradictory with other parts of the same paragraph, and its purpose could not be explained. The preceding
67 sentences in the same paragraph seem to recognize that if unusual or marked difficulty of operation in a plant is presented, the service should be considered in excess of team track or simple switch placement, and the additional service should be at the expense of the industry. The last sentence, on the other hand, holds that even though the service is unusual or of marked difficulty it shall not be considered in excess of team track or simple switch placement when other industries of substantially the same type, in the same vicinity receive comparable service.

Attention is directed to interruption and interference with the carrier's switching operations due to industrial operations as set forth in rules 6 and 8, and the definition of what should be considered as plant interruption and interference in rule 9. While these rules were promulgated by the carriers for their guidance, they have no binding force, and as shown by this record for all practical purposes they have been disregarded in every case where it appeared to a carrier in its interest to do so.

The reasons motivating the carriers to disregard or ignore these rules are usually grounded on consideration of traffic which can be diverted from other carriers to their lines by the payment of an allowance. The record discloses numerous cases in which unsuccessful formal complaints were brought before us by industries seeking an allowance. Notwithstanding our finding that such industries were not entitled to allowances, the carriers later granted them.

The principal reason for the large increase since 1920, in allowances in the Chicago industrial area is the close relationship existing between the Elgin, Joliet & Eastern, one of the carriers serving many industries in that area, and a large industry which
68 receives allowances at many of its plants in the East. Because of the dominating influence of the parent industry, this carrier was not averse to making allowances, and in so doing disregarded the rules which had been drawn for the guidance of all carriers in making allowances. Competing carriers were thus forced to the same ends to secure or retain traffic. The practices give undue and unreasonable preference and advantage to the favored industry, and work undue and unreasonable prejudice and disadvantage to shippers in the same business who are not the beneficiaries of such allowances.

It is contended that in all cases where an industry performs its own spotting and receives an allowance therefor it can perform the work cheaper than the carrier, and that it is, therefore, in the interest of economy for the carrier to pay an allowance rather than perform the service itself. Doubtless this is true if it can be assumed that it is the carrier's duty to perform the spotting service in exactly the same manner as the industry finds it necessary to perform it in facilitating its operations. In making the cost studies the time

consumed in moving cars between the interchange tracks and the points of loading or unloading within the plant is taken into account in determining the cost to the industry, regardless of the number of times the plant engine moves to and from the interchange tracks. Thus the industry by performing its own serve is enabled to have cars spotted at its convenience and to the extent that it is compensated therefor by the carriers it not only obtains a service far in excess of any service the carriers would give under the line-haul rates should they undertake to perform the spotting service, but also a service in excess of that afforded other shippers dependent upon the carriers for such service. Compare, Chesapeake &. O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., Chicago & A. R. Co. v. Kirby and Davis v. Cornwell, supra. The industries generally use small locomotives, have fewer men in the switching crew, and pay lower wages than the railroad. Thus if railroad engine-hour costs are computed on the basis of the number of engine hours charged by the industry to interchange switching, it is clear that the cost to the railroad would be greater. However, if the spotting service which the industry performs is not one which the duty of the carrier requires it to perform, the cost thereof whether great or small is of no concern and no economy to the latter.

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Notwithstanding that fact that some industries are shown on the record to have intricate and complex systems of trackage consisting of numerous divisions and yards, each having a large number of tracks aggregating many miles in length, it is contended that even at the larger plants which now receive allowances, or which have locomotives assigned by respondents for exclusive use of such industries in performing the spotting service, no more than the equivalent of team track or simple switch placement was furnished by the carriers. It was attempted to establish that by dividing such industries in the sections, and further subdividing these sections into small yards and individual tracks, a point is finally reached where the carrier would perform no more service in reaching such location than it would perform in reaching team tracks or individual industrial tracks scattered throughout a city. We cannot grant the merit of such assumptions, for as we have seen the service afforded at such plants is in excess of the service which the carriers are obligated to perform under the line-haul rates and in excess of the equivalent of team track or simple switch placement. Compare New York Central & H. R. R. Co. v. General Electric Co., supra.

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The argument has also been advanced on brief that a general definition of what constitutes the equivalent of team track or simple switch placements by the carriers involved herein can not be made. We are inclined to the belief that this argument has merit, but this assumption does not conflict with our view, which is that a determination of what constitutes a carrier's duty with respect to the equivalent of team track or simple switch placement can readily be ascertained at any individual industry by experienced railroad oper-

ating men or committees if honestly performed without consideration of traffic reasons.

A vice president of one of the larger railroad systems gave general testimony with respect to his study and efforts to obtain uniformity in the matter of allowances. His testimony taken as a whole, recognizes the general confusion and lack of uniformity that have existed among the carriers for many years, due largely to the fact that each carrier has pursued whatever course its self-interest dictated with respect to the advisability of granting an allowance.

He also referred to the competitive methods of transportation which have greatly increased since 1920, and recognized that due to such competitive methods the railroads of the country at present should firmly retain the advantage now accruing to them in the performance of spotting service, maintaining that the delivery and receipt of freight upon private industrial sidings is one of the most important advantages that railroads have in retaining their close association with the shippers, with consequent traffic benefit to the railroads. He considers it entirely proper for a carrier to employ an industry as its agent to perform spotting service
71 where the industry operates its own power, so long as the allowance for such spotting is less than the cost to the carrier, and where the carrier could itself perform such service. Clearly this latter statement means that where a carrier could not, for any reason perform the service, an allowance would be improper. Further, as we have previously shown, the allowances which the carriers pay are usually based upon actual cost subject to a certain maximum amount. This cost is determined in part by the number of engine hours devoted to the spotting service regardless of the number of movements to and from interchange tracks made by the plant power.

INDUSTRIAL WEIGHING

Practically all industries engaged in the production of iron and steel products, cement, sand and gravel, and similar heavy commodities, maintain track scales within their plants and weigh all cars handled both empty and loaded. The industries are thus enabled to keep an accurate record of the many materials and the grades thereof used in their operations. Weighing service, therefore, as carried on by industries is an indispensable part of the production and merchandising of their products.

Ordinarily the weights obtained by the industries are accepted by carriers for assessing freight charges, and the carriers are thus relieved of weighing on their scales. It is urged on this record that inasmuch as the carriers are relieved of the expense of weighing, the weighing service as conducted is equally beneficial to both the industries and the carriers. The record is entirely persuasive, however, that the industries maintain their scales and weigh their raw materials and finished products as well as the empty car entirely for their own benefit and convenience, and that the benefit derived

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by the carrier through the use of such weights is merely incidental.

72 In practically all cases the unwillingness of the industries to accept the weights of the carriers and the consequent use of the industries' scales involves extra switching within the plants, and this accounts for the fact that in many cases the industries will not permit carriers to deliver or receive cars directly at the point of unloading or loading, but require such delivery or receipt on tracks from which the cars can later be moved to the scales, weights ascertained, and the cars thereafter placed at the location desired by the industries. The manufacture of some products, for example, cement, requires ascertainment of the weight of all raw materials in order that these may be delivered at the point where manufacture begins, in the exact proportions necessary in delivering a product of the desired specifications. The movement of cars from the point where they are originally delivered or received to the scales for weighing, and their later placement would necessitate a charge for such movement if performed by a carrier. An industry by the use of its own locomotives thus avoids such expense, at the same time performs a service indispensable to its operations, and in many instances receives payment by the carrier for such service. There is no indication on this record that the individual respondents are unable or unwilling to render such weighing service upon their own scales as it is incumbent upon them to perform.

Illustrative of the necessity for plant weighing, the record shows one case where the switching service within the plant is performed by a locomotive jointly operated by several respondents. In this case cars are placed in an interchange yard within the plant by respondents. Such cars are later moved by the industry's locomotive to the scales, weighed, and placed in a second industrial yard also within the plant, and from this latter point are thereafter moved

73 by the respondents' joint locomotive to the numerous points of unloading within the plant without charge in addition to the line-haul rate. In this case the respondents have their own track scales, and are able and willing to perform the same weighing service for this industry that they perform for all other shippers. The industry is unwilling to accept the weighing service which it is respondents' duty to perform. Its operations require the use of its own scales with the consequent necessity of respondents' making a second movement of the cars without any compensation therefor. Under Rules 8, 9 and 10 of appendix A, the scale is regarded as the point of interruption or interference and the service performed after such interruption or interference is chargeable to the plant.

DEMURRAGE RULES

The Uniform Code of Demurrage Rules was promulgated early in 1910 as a result of recommendation of the Committee on Car Service and Demurrage of the National Association of Railway Commission-

ers, of which a former member of this Commission was chairman. Rule 3–E of the present code which was formerly 3–F provides:

Section E.—Except as otherwise provided in Section B, Paragraph 1, of this rule on cars to be delivered on interchange tracks of industrial plants performing the switching service for themselves or other parties, time will be computed from the first 7:00 a. m. after actual or constructive placement on such interchange tracks until return to the same or another interchange track. Time computed from actual placement on cars placed at exactly 7:00 a. m. will begin at the same 7:00 a. m.; actual placement to be determined by the precise time the engine cuts loose. (See Rule 2, Section A, Paragraph
74 2, page 31, Rule 4, Section C, page 35, and Rules 5 and 6, pages 36 and 37.) Cars returned loaded will not be recorded released until necessary billing instructions are furnished.

NOTE.—Where two or more parties each with its own power take delivery from the same interchange track, or where the railroad company uses the interchange track for other cars, or where the interchange track is not adjacent to the plant and the industry uses the railroad's tracks to reach same, a notice of placement shall be sent or given to the consignee and time will be computed from the first 7:00 a. m. thereafter.

It does not differ materially from what was formally Rule 3–F. Rule 5 of the code, the so-called constructive placement rule, provides:

When delivery of a car consigned or ordered to an industrial interchange track or to other-than-a-public-delivery track can not be made on account of the inability of the consignee to receive it, or because of any other condition attributable to the consignee, such car will be held at destination, or, if it can not reasonably be accommodated there, at the nearest available hold point, and written notice that the car is held and that this railroad is unable to deliver will be sent or given to the consignee. This will be considered constructive placement.

It is significant that at the time these rules were adopted certain of the large industries which performed their own switching service proposed to have incorporated therein what is known as the industrial rule. This rule in substance provided that when cars were interchanged with minor railroads or industrial plants performing their own switching service, handling cars for themselves or
75 other parties, an allowance of 24 hours would be made for switching in addition to the regular time allowed for loading and unloading. If returned loaded an additional 48 hours free time would be allowed. The rule was tentatively approved by the sub-committee, and differed from what has just been stated in the fact that minor railroads were not included. After more mature deliberations, however, the committee reached the conclusion that it should have no place in the demurrage code, and in effect held that the carrier can make no allowance of any character to a shipper or

receiver for doing what the carrier itself is under no obligation to do, and that an allowance in the form of additional time was just as unlawful as one in the form of money.

Section 1 (3) of the act includes "delivery" and "receipt" in connection with "transportation." Their ordinary signification must be applied to such words. Therefore, delivery, i. e., the act of delivery, release, transference, or surrender, as applied to cars, must be taken as the act of the carrier in surrendering its control of the cars to the industry.

Generally all industries which perform their own spotting service have entered into average demurrage agreements with the carriers that directly serve them and this should be borne in mind when we come to consider overhead allowances.

OVERHEAD ALLOWANCES

Many of the plants discussed in this report are reached directly by one or more carriers and are indirectly reached by other carriers through absorption of switching charges. Allowances are made to these plants on line-haul traffic by the carriers that reach them directly. These carriers make no allowances, generally speaking, on traffic on which they secure merely a switching charge.

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In these instances the carrier that absorbs the switching charge makes an allowance to the plant, and these allowances are hereinafter designated as overhead allowances. However, all cars whether transported by the carrier in line haul or switching service are taken into account in the demurrage records of the delivering carrier. The tariffs providing for the switching charges in some cases list the industries to which the switching charges apply, in others, the switching limits are defined, and in still others switching charges are specifically designated to apply from the interchange track of the connecting line to interchange tracks of the plant. Thus, in the first two cases mentioned if it can be said that the switching charge applies from the interchange track of the connecting line to a final spot within the plant, the line-haul carrier by the absorption of the switching charge has paid the delivering carrier for that service, and the action of the line-haul carrier in making an overhead allowance to the plant results in a double payment by it for a portion of said service. If on the other hand, the switching charge applies to the interchange track of the plant, and the plant requested the switching carrier to perform the actual spotting within the plant beyond the interchange track, an additional charge would necessarily apply for that additional service. The plant by performing the service with its own power relieves itself of paying that charge, and receives an allowance therefor. There can be no justification for an allowance in this latter instance and the payment thereof is a pure rebate. The carriers assign as a reason for their failure to make an allow-

ance out of the switching rate, instead of having the line-haul carrier make an overhead allowance, the fact that the revenue de-
77 rived from the switching charge is too thin; further that the industry is performing a service which the carriers paying the allowance are required to perform as part of their transportation duty. Just how the carriers could perform this service is not apparent. It is claimed the switching line is agent for the line-haul carriers, and the industry is the subagent. If this were true a separate average demurrage agreement should have been entered into with each line-haul carrier and not with the switching line. However, the position taken is inconsistent, because they state that the allowances are made to the plant to fulfill what they regard as their obligation in spotting the cars at the point of loading or unloading, and that the allowances paid are in all cases less than the cost would be to the carrier if it undertook to perform such service. Manifestly, this would likewise be true with respect to the switching service if as a matter of fact the switching charge can be said to extend to the point of loading or unloading within the plant. Nevertheless, these carriers say that rather than pay an allowance on such traffic they would elect to perform the service themselves. Nothing seems clearer than that the obligation to make delivery rests only with the delivery line, whether that line be a trunk line or switching carrier. If any allowance is to be made to industries for performing a part of the services which the delivering carrier is under legal obligation to perform such allowance should concern only the delivery carrier.

SUMMARY

Involved in this proceeding are approximately 200 industrial plants where spotting allowances are paid; and also numerous plants at which respondents assign locomotives to perform spotting
78 service beyond the points of interchange. In either case a second placement of cars is made. Some of the latter plants require the full-time assignment of locomotives for their exclusive use, and the service is performed under the direction and control of the industry. Others require such service for shorter periods, in some cases amounting to several hours daily. Manifestly it is not the amount but the kind of service required which must be considered in determining whether the performance of such service is an obligation of the carrier under its line-haul rates.

This proceeding also involves many industries which perform their own service without the assumption by respondents of the costs of any operation beyond the points of interchange. Some of these have unsuccessfully sought allowances, or requested respondents to perform greater service, which has been refused. Others have made no application for allowance, or for greater service, due to the fact that the service of a locomotive not under its direction and control

would be attended by extreme hazards to plant employees or property, and in some instances by the necessity for secrecy regarding manufacturing methods. Others do not desire the operation of respondents' locomotives within their plants because of interference with industrial operations, even though to perform the service themselves results in increased operating expenses. We believe it must be conceded that industries such as are described in this paragraph are often compelled through the payment of freight rates to bear transportation charges which are dissipated by certain respondents in payment for or performance of services which are in excess of such respondents' legal obligations. Payment of allowances by respondents amounted to more than $9,000,000 for the years 1927 to 1931, inclusive, but we have no means of estimating the expense to respondents for performing spotting service at industrial plants.

79 While it is contended that discontinuance of payment of allowances, or performance by the carriers of service in lieu thereof, would induce the industries affected to use competitive means of transportation, such contention is unsupported by convincing evidence. It does not appear that the respondents which do not pay for or perform industrial spotting service have suffered to any greater extent from competitive forms of transportation than those carriers which have indulged in such practices. We reach the conclusion that little if any traffic is being retained by respondents through the payment of such allowances, or the performance of spotting service.

It is likewise urged that the line-haul rates have been fixed to compensate the carriers for the performance of spotting service, but our consideration of the service as here involved leads us to a different conclusion. Many of the industries which now receive allowances or the performance by the carriers of the spotting service in lieu thereof, performed their own service without compensation or assistance for many years prior to the time they began receiving aid from the carriers, and at the time the change was made, the line-haul rates were not altered. In such cases the carriers simply assumed a burden not previously borne.

This report deals only with traffic handled in interstate commerce and with Class I carriers. The principles announced, however, should be followed by all carriers subject to the Interstate Commerce Act. Section 15 (13) of the act has been subjected to abuse. Many allowances of the kind herein considered were and are paid which were and are unwarranted.

80 When a carrier is prevented at its ordinary operating convenience from reaching points of loading or unloading within a plant, without interruption or interference by the desires of an industry or the disabilities of its plant, such as the manner in which the industrial operations are conducted, the arrangement or condition of its tracks, weighing service, or similar circumstances, as set

forth more specifically in rules 8, 9, and 10 of appendix A, the service beyond the point of interruption or interference is in excess of that performed in simple switching or team track delivery. Payment for, or assumption by the carrier of, the cost of service performed beyond such points of interruption or interference is found to be unlawful in violation of section 6 of the act.

Generally the payment of allowances for service, or the performance of such service without charge, to points within a plant which respondents are prevented, by the desires of an industry or the disabilities of its plant, from reaching, without interruption or interference by the conditions mentioned in the preceding paragraph, provides the means by which the industry enjoys a preferential service not accorded to shippers generally. Such payment or performance dissipates respondents' funds and revenues, is not in conformity with efficient or economic management as contemplated by the Interstate Commerce Act, and not in the public interest.

MAHAFFIE, Commissioner, dissenting in part: Much of the majority report is devoted to a discussion of legal principles with which I agree. It seems to me entirely clear that an allowance to an industry for spotting, which can not be done by the carrier on account of physical conditions, or which the industry is unwilling to allow the carrier to perform, is improper. Not only does this seem clear, but it is, I think, undisputed on this record.

81 I do not agree, however, that the right of the carrier to perform terminal services is limited to what is termed "the equivalent of team-track spotting", nor that a tariff which provides for a terminal service in excess of what apparently is considered to be that minimum, is necessarily unlawful.

I think it likely that practices have developed in connection with both services and allowances that are wasteful and should be discontinued. Notwithstanding that fact, however, a carrier has a certain discretion as to the terminal services it will perform in connection with the line-haul movement.

The carrier is under no obligation to charge for terminal services. Business interests may justify it in waiving any such charge, and it will be considered to have waived it unless it makes plain to both shipper and Commission that it is insisting upon it. (Interstate Commerce Commission v. Stickney, 215 U. S. 98, 105.)

Some carriers hold themselves out to perform store-door pick-up and delivery services on certain classes of traffic at no additional cost to the shipper. Tariffs providing for lighterage and elevation services, or allowances for such service performed by the shipper for the carrier, are not considered improper. United States v. Baltimore & O. R. Co. (Arbuckle Case), 231 U. S. 274; Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42; Lighterage Cases, 203 I. C. C. 481.

In determining whether a practice is wasteful we should be in position to find that it has an adverse effect on the carrier's net

82 income. No such finding can, I think, be made as to the practices here held unlawful. Nor do I understand the majority so to find.

While it is concluded that allowances are wasteful and contrary to the public interest, the jurisdictional findings necessary to support that conclusion are not made. Nor does the majority find that the services for which allowances are made have not been considered in fixing the level of the line-haul rates. Chesapeake & Ohio Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., 270 U. S. 260–265. The record, on the contrary, is conclusive that they have been considered in many instances. It is equally conclusive that it is generally an economy to the carrier to make the allowance rather than to perform the service with its own forces. The act makes it the duty of the carrier to handle shipments offered from and to locations on private sidings. This necessarily involves placement of the car for loading and unloading. An industry track placement is as much the carrier's duty as placement on a team-track. Whether it is as "simple" is beside the point. The fact is that by reason of the volume of traffic and the lack of capital investment in the facility and expense in maintaining it, it usually is less expensive to the carrier to perform its terminal services on industry tracks than on its own team-tracks.

The general subject here under consideration is not new. It has been before the Commission and the courts many times. General Electric Co. v. New York Central & H. R. Co., 14 I. C. C. 237; Associated Shippers of Los Angeles v. Atchison, T. & S. F. Ry Co., 18 I. C. C. 313; Car Spotting Charges, 34 I. C. C. 609; Interstate Commerce Commission v. Stickney, supra; Interstate Commerce Commission v. Diffenbaugh, supra; Atchison, T. & S. F. Ry Co. v. United States, 232 U. S. 199; Los Angeles Switching Case,
83 234 U. S. 294; New York Central & H. R. Co. v. General Electric Co., 219 N. Y. 227.

In my judgment, there is no warrant in this record or in the cases relating to the subject for finding, as does the majority, that services rendered beyond "the equivalent of team-track spotting" are unlawful.

Commissioner Atchison did not participate in the disposition of this proceeding.

By the Commission:

[SEAL] GEORGE B. McGINTY,
Secretary.

84 APPENDIX A

ACTION OF THE TRAFFIC EXECUTIVE ASSOCIATION, EASTERN TERRITORY, AT MEETING HELD JULY 18, 1929

In view of the conditions under which arrangements for plant facility allowances have developed, it was the consensus (a) that such allowances should be limited to iron and steel industries and (b) should be on the 1915–1916 cost basis.

In the event that any departure from the foregoing is deemed advisable, the proposal with all the facts should be presented to the Traffic Executive Committee having jurisdiction, for review prior to any investigation of costs of approval or recommendation of the proposed arrangement.

Procedure for Consideration of Applications for Allowances and Rules for Determination of Allowances to Industries for Plant Facility Operation, Adopted by the Central Freight Association, Trunk Line Association and New England Freight Association

(1) There shall be appointed a Special Standing Committee of not to exceed seven (7) members to be known as the C. F. A. Committee on Terminal Allowances and to be composed of members of the General Committee who shall act in person and not by proxy, except to another member of the Committee, to whom shall be referred for investigation and recommendation, all applications for new allowances or for changes in allowances already made, it being understood that in Trunk Line Territory, a Special Committee is not necessary inasmuch as the matters referred to are handled by the Freight Traffic Managers Committee. It was understood that in Trunk Line Territory the Freight Traffic Managers Committee will act in the same manner as the special committee of the C. F. A.

(2) There shall be appointed an Accounting Committee to conduct cost studies of plant facility operations in the manner provided below. This Committee shall, in all cases, include local operating representatives of the roads serving the plant who, in co-operation with the Study Committee, shall determine whether the plant is properly, efficiently and economically operated.

(3) These committees shall function as follows:

1. A plant desiring a plant facility allowance or a change in an existing allowance should present its application on prescribed form to the Railroad or Railroads with which it connects, such application to be supported by five (5) copies of blueprint or other diagram showing the complete layout of the plant and tracks.

2. If the Railroad or Railroads which receive the application desire to avail themselves of the services of the applicant and make an allowance therefor, it or they shall submit the application to the Chairman of the Association having jurisdiction with request that study be made. The Chairman of the Central Freight Association will then confer with the Chairman of the Committee on Terminal Allowances as to allowances in C. F. A. territory.

(a) If in their opinion the study should not be made a conference of the directly interested roads with the Committee on Terminal Allowances shall be held to consider the subject.

(b) If in their opinion or in the case of allowances in Trunk Line or New England Territory in the opinion of the General Committees a study should be made—

The Chairman of the Association in whose territory the study is to be made shall instruct the Accounting Committee, referred to in Section 2 hereof, to review the operation of the plant and decide if it conforms with good railroad practice or otherwise. If the operation is found to be improper or not according to good railroad practice, the Accounting Committee will confer with the applicant and suggest changes necessary to meet these requirements. If such requirements are not fulfilled no study shall then be made, but the Accounting Committee shall report its findings to the C. F. A. Committee on Terminal Allowances for review and recommendation to the General Committee in the case of C. F. A. and to the T. L. or N. E. Gen. Committees in the case of allowances in those territories. If in the opinion of the Accounting Committee the operation is proper it will proceed to make a study to determine the cost in the manner set forth in Rules 1 to 16 inclusive.

87 (c) The Interstate Commerce Commission has held that switching services by a plant facility for account of a carrier must not exceed the equivalent of team track or simple switch placement. If no unusual or marked difficulty of operation in a plant is presented, the service may be considered not in excess of a simple switch.

If the plant requires some unusual complicated or expensive switching service in comparison with other plants of substantially the same type (but not necessarily of the same output) in the same vicinity, it shall be held that the service is in excess of a simple switch and no allowance shall be made.

(4) Upon receipt of the Accounting Committee's report, the Chairman of the Central Freight Association shall submit it to the Committee on Terminal Allowances for its review and recommendation. Upon receipt of the report and recommendation of the Committee on Terminal Allowances, the Chairman of the Central Freight Association shall present it to the General Committee for consideration. If approved it shall be referred to the Central Traffic Executive Committee for disposition. For Trunk Line and New England Territory, the report of the Accounting Committee will be submitted by the Chairman of the Trunk Line Freight Traffic Manager's Committee or the Chairman of the New England General Committee as the case may be, to said Committees respectively, for disposition.

88 RULES FOR DETERMINATION OF ALLOWANCES TO PLANT FACILITIES

Rule 1. To determine the amount to be paid by the Railroad to the plant for the terminal service performed, a study of the switching operations of the Plant shall be made and cost of all services thus obtained. The study shall be made jointly by authorized representatives of the Railroad and of the Plant for an agreed period of time, to be known as the "test period," during which period the operations must be typical or as nearly as possible of average normal operating and weather conditions.

Rule 2. The test period shall be sufficient to reflect representative average performance and expense. A minimum of seven (7) consecutive days should be taken with a preliminary educational period in which to instruct employees relative to the proper compilation of the field data. The data covering the preparatory period must not be used. If conditions are such that a test period of seven consecutive days is not representative of average or normal operating and weather conditions a period which shall be a multiple of seven days shall be studied.

Rule 3. An accurate record shall be made, on Work Report Card Form TAS—1, per sample attached hereto, of the service performed by each locomotive. The detail of service by minutes and the number of loaded and empty cars handled shall be recorded thereon. The cards shall be compiled by representatives of the Railroad and of the Plant at the time the service is performed, according to Rule 10 (Sections 1 to 16 inclusive), hereof.

Rule 4. The proportion of the total time of locomotive service that is chargeable to the Railroad and the Plant shall be obtained from an analysis of the work report cards according to Rules 10 (Section 1 to Section 20), 11, 12, 13, 14, and 15. The percentage of the total time chargeable to the Railroad as reflected by the analysis shall be applied to the total cost of the locomotive service, as provided for in Rule 16 hereof, to obtain the proportion of the expense chargeable to the Railroad.

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Rule 5. The proportion of the expense chargeable to the Railroad as prescribed in Rule 4 shall be divided by the total number of inbound and outbound loaded cars interchanged with the Railroad, during the test period to determine the amount per loaded car that may be allowed to the plant by the Railroad for terminal service performed. The number of loaded cars should be restricted to those physically interchanged by the locomotives during the test period.

Rule 6. The allowance to a plant for a terminal service shall be the same amount for each connecting Railroad and shall not exceed the amount it would cost the Railroad to perform the same service with its own locomotives, at its convenience, without interruption or interference. The cost of Railroad operation to be in each case determined from available data by the Study Committee.

Rule 7. The Plant shall receive from the Railroad on designated interchange tracks loaded or empty cars for placement at the Plant and shall deliver loaded or empty cars from the Plant on designated interchange tracks.

Rule 8. The service between point of interchange and point of loading or unloading, as the case may be, shall be charged to the Railroad, provided it is a progressive movement to point of placement or delivery, performed without plant interruption or interference. If Plant interruption or interference is encountered the service after such interruption or interference shall be charged to the Plant.

90 Rule 9. The following is a partial list of what shall be considered as plant interruption or interference as referred to in Rule 8.

(a) Convenience of the Plant, such as service in excess of normal operation.

(b) Plant operations that interrupt or interfere with movements of switch locomotives.

(c) Holding of cars for advice from the Plant as to disposition.

(d) Weighing for account of Plant.

(e) Locomotive crane operation that interrupts or interferes with movements of switch locomotives.

(f) Operation of Plant locomotives while engaged in performing work solely for account of the Plant that interrupt or interfere with movements of switch locomotives. This will include such services as switching car repair shop tracks of the Plant, moving cars of material between locations within the Plant, disposal of material for the Plant, etc.

(g) Maintenance or construction work, where it interferes with economical switching operations.

(h) Crews waiting for instructions from the Plant.

Section 18 of Rule 10 reads in part as follows: "On cars weighed for information or account of the plant the scale is the point of interruption or interference."

91 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

MEXICAN PETROLEUM CORPORATION OF LOUISIANA, INCORPORATED, TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Submitted October 17, 1934—Decided June 25, 1935

Carrier's obligations under its interstate line-haul rates found not to extend beyond the present points of interchange, and payment of an allowance to the industry for service beyond such points found unlawful

Same appearances as in the original report.

SIXTEENTH SUPPLEMENTAL REPORT OF THE COMMISSION

Division 6, Commissioners McManamy, Lee, and Miller

BY DIVISION 6: In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced concerning the propriety and lawfulness of the payment of allowances to individual industries heard on the

record for the performance of spotting service at their plants,
92 or the performance of such service by respondents in lieu of payment. The portion of this proceeding now before us presents the question of whether the Mexican Petroleum Corporation of Louisiana, Incorporated, hereinafter referred to as the Mexican corporation, or the industry, may lawfully receive compensation in the form of allowances out of the line-haul rates for the performance of spotting service, i. e., the movement of cars beyond the interchange tracks of its oil refinery located at Destrehan, La.

This plant was built during 1914 and 1915. There are within the plant inclosure about 3.5 miles of track laid with 60- and 75-pound rail. These tracks were constructed by The Yazoo and Mississippi Valley Railroad Company hereinafter called respondent, for account of the plant. Respondent traverses the industrial property in an east-to-west direction. The main refinery area is situated on the south side of respondent's tracks and about 30 large oil-storage tanks are located therein. The northern portion of the plant is occupied by 17 similar storage tanks.

Interchange of cars between respondent and the plant takes place on two tracks located on respondent's right-of-way adjacent to its main track at the approximate center of the plant. Under normal business conditions there are shipped daily from 40 to 50 cars of outbound commodities, consisting of gasoline, kerosene, oils, grease, and asphalt. Many shipments are made in tank cars owned by the Mexican corporation, and these cars are returned to Destrehan empty. Inbound cars are not classified by respondent when placed on the interchange tracks. Certain types of cars are required for the loading of the various products. Those used for shipments of crude oil or asphalt can not be used for shipments of gasoline and similar products without cleaning. Tank cars often develop
93 leaks, the existence of which is not detected until the cars are placed for loading. Such cars are necessarily removed to the industry's car repair shop and other cars substituted therefor. Switching service to and from the interchange tracks, as well as intraplant switching, for many years has been and now is performed by power owned by the Mexican corporation. The record discloses that the industrial trackage contains one 20-degree curve. Until about 1926 a gasoline locomotive was used, which at that time was replaced by a 40-ton saddle-tank, oil-burning 0-4-0 type locomotive. During short periods the industry has used somewhat larger locomotives loaned to it by respondent. Respondent uses coal for fuel in its locomotives. The hazards within the plant require the use of special spark arresters when such fuel is used. Under normal business conditions the plant locomotive is operated from 14 to 16 hours daily in spotting service, as the placement of cars for loading and their removal thereafter is practically continuous and a locomotive must be available at all times. There are several loading points within the plant, but more than one commodity is loaded at some points.

For instance, kerosene, blue gasoline, white gasoline, and ethyl gasoline are loaded within a space from 150 to 200 feet long, and the use of pipes and spouts make it unnecessary for a car to be directly opposite the tank which contains the commodity to be loaded. However, this loading track has a capacity of only six cars. It takes 20 or 25 minutes to load six cars at this point, after which the Mexican corporation immediately pulls them out and spots other cars there. The spotting service must be conducted in such manner as to provide an adequate supply of cars at such times as will meet the industrial needs, but respondent has never been requested to perform the service. If respondent were required to perform
94 this service it would be necessary for it to assign a locomotive for exclusive use within the plant. The Mexican corporation, for its own convenience, prefers to perform this service.

In the latter part of 1926 the Mexican corporation began negotiations with respondent for an allowance for the performance of the spotting. The industry believed that it was performing a service that respondent should perform, because at its other terminals or refineries at Savannah, Ga., Jacksonville and Tampa, Fla., Memphis, Tenn., and Baltimore, Md., for instance, such service was performed by the railroads. After considerable informal discussion and correspondence, a study was made in August 1928, to determine the cost of the service, and an allowance of 90 cents per loaded car was granted by tariff publication, effective December 10, 1928. There is some evidence that during the time when the allowance was being considered, respondent offered to perform the service within the plant, but that such offer was refused.

The record is persuasive that the Mexican corporation finds it necessary for industrial reasons to perform the spotting service, and that such operation could not be successfully carried on by respondent's making two or even three daily switches within the plant. The spotting was performed by the industry for many years without request for an allowance or for any service in lieu thereof. No legal obligation rests upon respondent to perform switching or spotting service solely for the industry's convenience. Standard Oil Company of Louisiana Terminal Allowance, 209 I. C. C. 68, and cases therein cited.

We find that the interchange tracks at this plant are reasonably convenient points for the delivery and receipt of interstate
95 shipments of carload freight; that the Mexican corporation performs no service beyond such points of interchange for which the respondent carrier is compensated in its interstate line-haul rates; and that by the payment of an allowance respondent carrier provides the means by which the industry enjoys a preferential service not accorded to shippers generally and refunds or remits a portion of the rates or charges collected or received as compensation for the interstate transportation of property, in violation of section 6 (7) of the Interstate Commerce Act.

An appropriate order will be entered.

96 ORDER

At a session of the Interstate Commerce Commission, Division 6, held at its office in Washington, D. C., on the 25th day of June, A. D. 1935.

MEXICAN PETROLEUM CORPORATION OF LOUISIANA, INCORPORATED TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by The Yazoo and Mississippi Valley Railroad Company to the Mexican Petroleum Corporation of Louisiana, Incorporated, for performance by the latter of spotting service within its plant at Destrehan, La., and the Commission having under date of May 14, 1934, made and filed a report Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Mexican Petroleum Corporation of Louisiana, Incorporated, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the pay-
97 ment of said allowance The Yazoo and Mississippi Valley Railroad Company violates the Interstate Commerce Act as set forth in the above-mentioned reports:

It is ordered, That The Yazoo and Mississippi Valley Railroad Company be, and it is hereby, notified and required to cease and desist on or before August 22, 1935, and thereafter to abstain from such unlawful practice.

By the Commission, Division 6.

[SEAL] GEORGE B. MCGINTY,
Secretary.

98 [Omitted.]

99 In United States District Court for the Eastern District of Louisiana, New Orleans Division

In Equity No. 315

COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF THE CELOTEX COMPANY, A CORPORATION, PLAINTIFFS

vs.

UNITED STATES OF AMERICA, TEXAS AND NEW ORLEANS RAILROAD COMPANY, THE TEXAS AND PACIFIC RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES), AND TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS, DEFENDANTS

Bill of complaint

To the Honorable the Judges of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

Colin C. Bell and Wm. Tracy Alden, Trustees of the Estate of The Celotex Company, a corporation, present this petition, or bill of complaint, against the United States of America, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, Missouri Pacific Railroad Company, L. W. Baldwin and Guy A.
100 Thompson, trustees, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans; and thereupon plaintiffs respectfully state:

I

Colin C. Bell and Wm. Tracy Alden are trustees of the Estate of The Celotex Company, a corporation organized and existing under the laws of the State of Delaware licensed to do business in the State of Louisiana, and having its principal plant and principal operating office at Marrero, Louisiana, in the Eastern District of Louisiana, New Orleans Division, where said company is engaged in manufacturing celotex board from the dried refuse of sugar cane, which is distributed by shipment in carload lots, by railroad, in interstate commerce, to various points in the United States, other than Louisiana. In the conduct of its business said company receives carload shipments of various commodities moving in interstate commerce, to its aforesaid plant at Marrero, Louisiana, from points of origin outside of the State of Louisiana.

Said trustees were appointed by orders of the United States District Court for the District of Delaware entered on February 8, 1935, and March 1, 1935, In the Matter of The Celotex Company, a corporation, Debtor, In Proceedings for Reorganization under Section 77B of the Bankruptcy Act, No. 1080, and said Trustees are, under the aforesaid orders of appointment, empowered to operate

and conduct the business of The Celotex Company, and in connection therewith to institute, prosecute and become parties to suits, actions, and proceedings at law or in equity. Said trustees and The Celotex Company will be for convenience hereinafter referred to as Plaintiff.

101

II

Defendants, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, Missouri Pacific Railroad Company, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, hereinafter sometimes for convenience referred to collectively as defendant carriers, are corporations organized and existing under the laws of various states of the United States, all of whom are qualified to do business and are doing business in the State of Louisiana and have lines of railroad within, or extending into, the said Eastern District of Louisiana, New Orleans Division. The properties of the said Missouri Pacific Railroad Company are now in the custody of L. W. Baldwin and Guy A. Thompson, trustees appointed by the District Court of the United States for the Eastern District of Missouri, Eastern Division.

Each of said defendant carriers is engaged in the transportation of property by railroad in interstate commerce, and, as such, is subject to the provisions of an Act of Congress entitled "An Act to Regulate Commerce," and approved February 4, 1887, and all acts supplemental thereto or amendatory thereof, being the Interstate Commerce Act.

Said carriers receive at points of origin on their lines of railroad, as well as from connecting carriers, carload freight for transportation to and delivery at plaintiff's aforesaid plant at Marrero, in Jefferson Parish, Louisiana, and in like manner receive freight from plaintiff at its said plant for transportation to destinations on their own lines or the lines of the other carriers, all in interstate commerce. Insofar as said defendants The Texas and Pacific Railway Company and Missouri Pacific Railroad Company participate in the movement of said traffic, the handling of such shipments to

102 and from plaintiff's said plant to and from, the rails of the defendants The Texas and Pacific Railway Company and Missouri Pacific Railroad Company is over the rails of the defendant Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, which acts as agent or switching carrier for those defendants.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission, entered July 11, 1935, in its docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or

Expenses, Part II, Terminal Services; and to enjoin and restrain the said defendant carriers from the cancellation of tariffs filed with the Interstate Commerce Commission authorizing and providing for an allowance of 100 cents per loaded car for services and facilities connected with the transportation of property and for the furnishing of instrumentalities used in such transportation at plaintiff's aforesaid plant at Marrero, Louisiana, alleged to be required by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel or in any manner depart from the allowances for transportation service set forth in tariffs on file with the Interstate Commerce Commission for services and facilities in transportation at plaintiff's aforesaid plant at Marrero, Louisiana, or to make any effort to modify or change said tariffs in order to comply with the requirements of the said order, as more fully hereinafter set forth, and to set aside and hold for naught any and all acts of said defendant carriers performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated July 11, 1935.

103

IV

Said defendant carriers by lawful tariffs, on file with the Interstate Commerce Commission, have published and joined with other carriers in publishing rates and charges for the transportation of property to and from the spurs, sidings, tracks and loading and unloading points at the plant of the plaintiff at Marrero, Louisiana, which rates and charges so filed and established, contemplate the placement of the empty cars at the place of loading and the removal of the loaded cars therefrom and transportation over the lines of the defendants and their connections to consignees at final destination of said shipments, and also, in like manner, contemplate the placing of the inbound loaded cars at the final point of unloading in the plant of the plaintiff and the removal of the empty cars therefrom.

Plaintiff demanded of said defendant carriers that they perform their duty under the law as set forth in paragraph XI hereof, by transferring empty and loaded cars to and from loading and unloading points in plaintiff's said plant. The defendant railroad companies, in accordance with the requirements of the law, and performing their duty under the law, elected to have plaintiff perform the terminal services at its said plant. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between interchange tracks and points of loading and unloading in its said plant.

V

Said defendant Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans now has, and for several years has had, on file with the Interstate Commerce commission, in accordance with the

104 provisions of Section 6 of the aforesaid Interstate Commerce Act, its tariff No. 34-F, I. C. C. No. 10, which in item No. 40 requires and authorizes the payment to the plaintiff of 100 cents per loaded car as compensation for services performed and facilities furnished by the plaintiff in switching carload shipments of freight between loading and unloading tracks at plaintiff's plant at Marrero, Louisiana, and track connection with the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans. Said tariff also provides in item No. 10 that the Missouri Pacific Railroad Company and The Texas and Pacific Railway Company owning the right to use the said Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans tracks and facilities, all traffic to and from certain points, including Marrero, via such lines, or to and from industries and warehouses located on the said Terminal tracks, moving from and to points beyond the Terminal's stations via such lines will be treated as the traffic of said Missouri Pacific Railroad Company or The Texas and Pacific Railway Company. Said tariff No. 34-F, I. C. C. No. 10 was issued April 30, 1931, and effective June 10, 1931, and cancelled Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans Freight Tariff No. 34-E, I. C. C. No. 7, which cancelled that defendant's tariff No. 34-D, I. C. C. No. 3, both of which carried similar provisions granting plaintiff the aforesaid allowance of 100 cents per car as compensation for the services aforesaid. Under the provisions of the latter tariff, No. 34-D, said allowance became effective on interstate shipments December 17, 1926.

Said defendant Texas and New Orleans Railroad Company is the successor of Morgan's Louisiana and Texas Railroad and Steamship Company, which, on November 20, 1926, issued and filed with the Interstate Commerce Commission, in accordance with said provisions of Section 6 of the aforesaid Act to Regulate Commerce,

105 its tariff Authority No. A-14601, I. C. C. No. 4642-B, Local Terminal Charges Tariff No. 253, authorizing and requiring the payment to the plaintiff of 100 cents per car for services performed and facilities furnished in switching carload shipments of freight between loading and unloading tracks of the plaintiff in its said plant and track connections of said carrier at Marrero, Louisiana, and stating that this allowance included the movement and placement of a loaded car for unloading and the return of the empty car, or the movement and placement of an empty car for loading and return of same loaded. Said allowance became effective December 23, 1926, as to interstate traffic and has been paid by the said successor Texas and New Orleans Railroad Company since it assumed operation of the line of railroad formerly operated by the said Morgan's Louisiana and Texas Railroad and Steamship Company.

The amount of such allowances is less than the cost to the plaintiff for performing the aforesaid service, and is less than it would cost the said defendant railroad carriers, or either of them, to per-

form the service with their own engines and employees. Such allowances, therefore, are not in excess of just and reasonable allowances and are lawful under the provisions of paragraph 13 of Section 15 of the said Act to Regulate Commerce.

VI

Said tariff naming the aforesaid allowance to the plaintiff by the Morgan's Louisiana and Texas Railroad and Steamship Company, the predecessor of the defendant Texas and New Orleans Railroad Company, was published subsequent to, and in conformity with, two valid and subsisting and related written agreements entered into between said Morgan's Louisiana and Texas Railroad and Steamship Company and plaintiff wherein the said parties agreed
106 on the matter of construction and maintenance of certain railroad trackage at the aforesaid plant of the plaintiff and for a valid and subsisting consideration the said railroad agreed to pay the aforesaid allowance to plaintiff as previously herein described.

Likewise, said tariffs naming the aforesaid allowance to the plaintiff by the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, were published subsequent to and in conformity with a valid and subsisting written agreement entered into by and between said Texas and Pacific-Missouri Pacific Terminal Railroad of New Orleans and plaintiff on July 2, 1926, and supplemented by a further valid and subsisting written agreement entered into by the same parties October 27, 1926, wherein the said parties likewise agreed on the matter of construction and maintenance of certain railroad trackage at the plant of the said plaintiff and the said railroad defendant for a valid and subsisting consideration in the premises, agreed to pay the allowance hereinbefore described to plaintiff.

The aforesaid contracts will be tendered at the hearing hereon.

VII

On or about the 25th day of September 1926, the agreements between the Morgan's Louisiana and Texas Railroad and Steamship Company and plaintiff referred to in paragraph VI above, were submitted informally to the Interstate Commerce Commission for a ruling as to legality and necessity for publication and filing with the said Commisssion of a tariff covering the aforesaid allowance. Thereafter, the aforesaid tariff publishing the said allowance was filed, as aforesaid.

107

VIII

On July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as Ex Parte 104, and assigned the same for hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled

"Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a hearing at New Orleans, Louisiana, on May 9 and 10, 1932, and at Galveston, Texas, May 16–19, 1932. At these various hearings witnesses appeared, gave oral testimony and filed documentary evidence purporting to be
108 related to the subject under inquiry. Thereafter briefs were filed by various interested parties, including the plaintiff.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff and others, oral argument was had and thereupon the Commission issued its report and order, dated May 14, 1935, in which the Commission set forth its legal conclusions with respect to the general situation presented; various supplemental reports thereto were issued on said date; and further supplemental reports were later issued, among others, the Twenty-third Supplemental Report dated July 11, 1935, in which the Commission set forth its report and requirements with reference to the allowances paid to the plaintiff, as will more particularly hereinafter appear.

Said original report of the Commission is reported in Volume 209 of the Commission's official reports beginning at page 11, and a true copy thereof attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length. The said Twenty-third Supplemental Report of the Commission and said order thereon of July 11, 1935, is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

Under date of July 30, 1935, plaintiff filed with the Interstate Commerce Commission, its petition for rehearing and to vacate and set aside said Twenty-third Supplemental Report. A copy of said

petition is attached hereto, marked as "Appendix C," and made a part hereof. Said petition is as yet not acted upon.

109

IX

The evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants and their connections, in the transportation of carload freight at, to and from Marrero, Louisiana, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an examiner, at New Orleans, La., May 9 and 10, 1932, and at Galveston, Texas, May 16–19, 1932.

X

In alleged conformity with said order of July 11, 1935, the railroad defendants filed their several tariffs as follows:

Texas and Pacific-Missouri Pacific Terminal Railroad of New Orleans, Supplement 11, to Freight Tariff No. 34–F., I. C. C. No. 10, effective September 3, 1935, cancelling its tariff described in paragraph V hereof then on file with the Interstate Commerce Commission granting a terminal allowance of 100 cents per loaded car to plaintiff as defined in the Commission's Twenty-third Supplemental Report, Appendix B, hereto.

Texas and New Orleans Railroad Company (as successor of Morgan's Louisiana and Texas Railroad and Steamship Company) Supplement 2 to its I. C. C. No. 4642–B, Local Terminal Charges Tariff No. 253, effective September 3, 1935, cancelling its said predecessor's tariff described in paragraph V hereof then on file with the Interstate Commerce Commission granting a terminal allowance of 100 cents per loaded car to plaintiff as defined in the Commis-

110 sion's aforesaid Twenty-third Supplemental Report, Appendix B, hereto.

Thereafter, plaintiff filed petition with the Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act, seeking a suspension of the said tariffs, as proposing in alleged compliance with the said order of July 11, 1935, to cancel the terminal allowances to plaintiff for facilities furnished and services performed by it at its plant at Marrero, Louisiana. So far as plaintiff is advised, no action has been taken on said petitions.

XI

Section 1 of the Interstate Commerce Act, U. S. Code, title 49, Sec. 1, 41 Stat. L., 474, provides:

"(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, * * *.

(2) The provisions of this Act shall also apply to such transportation of passengers and property * * * but only in so far as such transportation * * * takes place within the United States, * * *.

(3) The term 'common carrier' as used in this Act shall include * * * all persons, natural or artificial, engaged in such transportation * * * as aforesaid as common carriers for hire. * * * The term 'railroad' as used in this Act shall include all * * * the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of * * * property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this Act shall include locomotives, cars and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. * * *

(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of * * * property to provide and furnish such transportation upon reasonable request therefor, * * *."

Section 6 provides:

"(1) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, * * * when a through route and joint rate have been established. * * * The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property * * * will be carried, * * * and shall also state separately all terminal charges, * * * and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee. * * * The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act. * * *

(7) No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of * * * property, as defined in this Act, unless the rates, * * * and charges upon which the same are transported by said carrier have been filed and

published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of * * * property, or for any service in connection therewith, between the points named in such tariffs than the rates, * * * and charges which are specified in the tariff filed and in effect at the
112 time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, * * * and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15, paragraph 13, provides:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Act approved February 19, 1903, as amended June 29, 1906 (U. S. Code, title 49, Sec. 41, 32 Stat. L., 847), provides, Section 1:

"The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, * * * and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce, and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. * * * Whenever any car-
113 rier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act."

XII

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of July 11, 1935, ostensibly was issued.

XIII

Inasmuch as the order of July 11, 1935, in alleged conformity with which the tariffs referred to in paragraph X hereof were filed, canceling the terminal allowances to the plaintiff is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of, will not grant full measure of relief to this plaintiff, unless all action which has been taken by the individual railroad defendants be set aside and held for naught, thereby restoring and making effective the lawful terminal allowances in effect on September 3, 1935.

XIV

The said order of July 11, 1935, as above set forth, is unlawful and void in the following respects:

(1) The Commission was without authority, either in law or in fact, to make the said order.

114 (2) There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally;

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for

load at, and removal of loaded car from, point of loading and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

(5) The evidence on which the order is based shows conclusively that the terminal allowances paid by the defendant railroad companies to plaintiff are for transportation services embraced within the services for which the defendant railroad companies publish, charge, and receive the rates named in their tariffs filed with
115 the Interstate Commerce Commission; that the said terminal allowances are no more than just and reasonable and, being published in the tariffs of the defendant railroad companies, are just as binding upon the defendant railroad companies as are any rates named in their tariffs to be collected for the transportation of property by them in interstate commerce.

(6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant railroad companies in connection with the terminal allowances at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowances named in the tariffs of the defendant railroad companies is paragraph (7) of Section 6; and so long as the allowances are named in the tariffs of the defendants they must be paid. The record wholly fails to show any violation of Section 6, paragraph (7).

(8) The order destroys the obligations of aforesaid valid and subsisting agreements or contracts, in violation of plaintiff's constitutional rights.

XV

Further, plaintiff shows that prior to 1905 the question had arisen as to the Commission's power over allowances to shippers for services performed and facilities furnished by them for carriers subject to the Interstate Commerce Act. In its annual report to the Congress in 1905 the Commission said:

"Terminal roads, elevator charges, and private cars.

"There is an important class of cases in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like prop-
116 erty. This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such performance may take the form of an excessive division to a terminal road owned by the shipper, the payment of an excessive elevator charge to the owner of the grain; the payment of an excess mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one shipper to another. It has been suggested that the Congress should prohibit railways from employing any agency or

using any facility in the transportation of property which is furnished by the owner of the property. We hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the services can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public, if provided by the shipper itself. We do think, however, that the commission should be empowered in a case of this kind, to determine whether the allowance to the property owner is just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Thereupon on June 29, 1906, 34 Statute 584, Section 1 of the Interstate Commerce Act was amended so that the term "railroad" should include—

"all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

117 The section was further amended so that the term "transportation" includes—

"All services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration, icing, storing, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act, to provide and furnish such transportation upon reasonable request therefor."

Section 6 was amended so as to require the schedules of rates filed by carriers to "state separately all terminal charges, storage charges, icing charges and all other charges which the Commission may require, all privileges or facilities granted or allowed." Section 6 was further amended by the addition of the following to paragraph (7): "Nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15 was amended by the addition of the following paragraph:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, or on its own

initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Commission has no power to prohibit defendant railroad companies from employing plaintiff to furnish services or from
118 using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad companies to plaintiff for service and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of July 11, 1935, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

XVI

Plaintiff has handled, and will continue to handle for the defendant railroad companies, loaded cars on which the terminal allowance payable to the plaintiff in accordance with the tariffs of the railroad defendants amounts in the aggregate to not less than Three Thousand Five Hundred Dollars ($3,500) per annum on interstate transportation. Unless the order of the Commission be set aside and the defendant railroad companies be required to withdraw their canceling tariffs, plaintiff will be compelled to perform the service of transporting from the interchange track the empty car to and the loaded car from the point of loading, and the inbound loaded car, from the interchange track, to and the empty car from the point of unloading to interchange tracks with the defendant railroad companies, for which transportation plaintiff will be compelled to assume an expense in excess of $1.00 per car more than if said terminal allowances were not cancelled, amounting in the aggregate excess to more than Three Thousand Five Hundred Dollars ($3,500) per annum, thereby subjecting plaintiff to irreparable loss and injury.

119 In consideration whereof, forasmuch as your plaintiff is remediless in the premises at law, and relievable only in a court of equity, plaintiff prays that a preliminary or interlocutory order or injunction be entered, restraining and suspending the enforcement, operation and execution of the said order of the Interstate Commerce Commission of July 11, 1935, until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling and setting aside the enforcement, operation and execution of said order.

Plaintiff further prays that a preliminary or interlocutory order or injunction be entered, requiring the railroad defendants, and each of them, to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission and suspending the cancellation of the terminal allowances now being paid plaintiff until final determination of this cause and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling and setting aside the said tariffs, and requiring the said defendants to file new tariffs restoring the terminal allowances in effect on July 10, 1935, on interstate traffic handled by the plaintiff at said plant in Marrero, Louisiana, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of July 11, 1935, and to restore the status quo of July 10, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad defendants, and each of them, to vacate, annul and set aside any and all action which may have been taken under and by
120 reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of July 10, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiff further prays, that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the defendants herein named, in the manner provided in the Acts of Congress, and plaintiff will ever pray.

Respectfully submitted.

(Sgd.) LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
1522 First National Bank Bldg., Chicago, Ill.,
Solicitors for Plaintiff.

H. C. LUTKIN,
HUBERT VAN HOOK,
134 South La Salle St., Chicago, Ill.,
MONTE M. LEMANN,
Whitney Building, New Orleans, La.,
Of Counsel.

121 STATE OF ILLINOIS,
County of Cook, ss:

William N. Webb on oath states that he is General Traffic Manager for Colin C. Bell and Wm. Tracy Alden, Trustees of the Estate of The Celotex Company, plaintiffs in the above entitled cause; that he

has read the above bill of complaint and knows the contents thereof, and that the same are true of his own knowledge.

(Sgd.) WILLIAM N. WEBB.

Subscribed and sworn to before me, this 2nd day of August 1935.

[SEAL] (Sgd.) M. M. KELLER,
Notary Public.

My commission expires May 24, 1938.

122 [Appendix A omitted. Printed side page, 122 ante.]

189 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

CELOTEX COMPANY TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Submitted October 17, 1934—Decided July 11, 1935

Carriers' obligations under their interstate line-haul rates found not to extend beyond the present points of interchange, and payment of an allowance to the industry for service beyond such points found unlawful.

Same appearances as in the original report.

TWENTY-THIRD SUPPLEMENTAL REPORT OF THE COMMISSION

Division 6, Commissioners McManamy, Lee, and Miller

By Division 6: In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced concerning the payment of allowances to industries for performing spotting service at their industrial plants, or the performance of such service by respondents in lieu of payment. This supplemental report deals with the propriety
190 and lawfulness of the allowance paid by the carriers which serve the plant of the Celotex Company at Marrero, La.

In 1920, the Celotex Company began the manufacture of celotex board of which the principal raw material is bagasse, the dried refuse of sugar cane. The plant was enlarged in 1926, and at present the property is about 3,900 feet long and averages about 1,200 feet in width. It consists of two sections. The tracks of the Texas and New Orleans Railroad Company and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, hereinafter referred to as the T. & N. O. and the Terminal, respectively, separate these sections, parallel and adjoin each other, and traverse the property in an east-to-west direction about the center. Each section of the plant

contains slightly less than two miles of standard-gauge tracks owned by the Celotex Company.

The T. & N. O. tracks are located on the south side of the Terminal tracks and are contiguous to the section of the plant where the celotex board is manufactured. The Terminal performs switching for the Missouri Pacific Railroad Company and The Texas and Pacific Railway Company at the northern section of the property which is used principally for storage of bagasse.

The track used by the Terminal for interchange with the Celotex Company is a siding adjacent to the main line and on the north side thereof. This track extends about two-thirds of the length of the plant property contiguous and convenient only to the section used for storage. The track used by the T. & N. O. for the same purpose is separated from the Terminal's interchange track just described, by the main lines of the two carriers. It is adjacent
191 to and serves only the section occupied by the manufacturing plant.

In 1926, the Celotex Company acquired a locomotive and with its own crew began to perform both the intraplant and spotting service beyond the two interchange tracks. Prior to that time the T. & N. O. had performed the service at the plant which then consisted only of the property now used for manufacturing purposes. When the Celotex Company acquired its locomotive, communication between the two sections of the plant was established by means of a track crossing the two main lines at the east end of the property, over which the industry was given permission to operate. Neither carrier has the right to cross the tracks of the other. It is shown on brief that a tractor now performs the service for which the locomotive was formerly used, but it is clear that the only means by which cars can be transferred from one section to another is by the plant locomotive, a tractor, or similar instrumentality. These are necessary facilities for carrying on the Celotex Company's industrial work and their use prevents interference with plant operations which would result by the operation of the T. & N. O. or Terminal locomotives within the respective parts of the plant to which those carriers have access.

For its spotting service the Celotex Company has received an allowance of $1 per loaded car from both the T. & N. O. and the Terminal, since December 23, 1926, and December 17, 1926, respectively. The allowance includes payment for switching to and from the unloading and loading points in both sections of the plant, although each carrier reaches only one section of the plant and cannot reach the other section. Interchange between the two carriers could be made only at a switching charge. The T. & N. O. handles a majority of the traffic from and to the Celotex Company.

192 While the Terminal by its tariff provides for the payment of the allowance, the same tariff provides that:

The Missouri Pacific Railroad Company and The Texas and Pacific Railroad Company, their successors or assigns, owning the

right to use the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans tracks and facilities, all traffic to and from stations shown in Item No. 125 (includes Marrero)[1] via these lines, or to and from Industries and warehouses located on Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans tracks, moving from and to points beyond the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans stations, via these lines, will be treated as their traffic and handled under the tariffs published by those companies, where the Missouri Pacific Railroad Company and (or) The Texas and Pacific Railway Company receive a line haul to or from stations west of Mile Post 9.

The record is not clear whether the Missouri Pacific and Texas & Pacific ultimately bear the allowance, but since the traffic handled by the Terminal is for account of those carriers, we assume that it is borne by them.

In National Malleable Castings Co. v. Pittsburgh & L. E. R. Co., 51 I. C. C. 537, 542, Division 1, said:

A determination that it is the duty of the line-haul carrier to perform a particular switching and spotting service, for the performance of which by the industry an allowance should be paid, presupposes that the nature of the industry is such as to permit the performance of that service by that carrier.

In this case the industrial layout is such that neither the T. & N. O. nor the Terminal, acting for the Missouri Pacific and/or the Texas & Pacific could perform the service for which the allowance is paid.

193 Whether any of the above carriers would be permitted to operate within the part of the plant accessible to them is not clear from the record, but it is definitely established that the Celotex Company's industrial requirements under normal business conditions can be met only by the use of its locomotive or a similar instrumentality in the manner in which the operations are now conducted.

We find that the respective interchange tracks as described of record are resonably convenient points for the delivery and receipt of carload freight; that the transportation service for which the respondent carriers are compensated in their line-haul rates begins and ends at said interchange tracks; that the service performed by the Celotex Company beyond those points is a plant service; and that by payment of an allowance to the Celotex Company for service performed beyond the interchange tracks on interstate shipments, respondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally, and refund or remit a portion of the rates collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

An appropriate order will be entered.

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[1] Parenthetical insertion ours.

194 ORDER

At a Session of the Interstate Commerce Commission, Division 6, held at its office in Washington, D. C., on the 11th day of July A. D. 1935.

CELOTEX COMPANY TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II, Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by the Texas and New Orleans Railroad Company, and the Missouri Pacific Railroad Company and The Texas and Pacific Railway Company, through their agent, the Texas Pacific-Missouri Pacific Terminal Railroad Company of New Orleans, to the Celotex Company, for the performance by the latter of spotting service within its plant at Marrero, La., and the Commission having under date of May 14, 1935, made and filed a report, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Celotex Company, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the payment of said allowance the above-named carriers violate the Interstate Commerce Act, as set forth in the above-mentioned reports:

195 It is ordered, That the Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company, The Texas and Pacific Railway Company, and the Texas Pacific-Missouri Pacific Terminal Railroad Company of New Orleans be, and they are hereby notified and required to cease and desist on or before September 3, 1935, and thereafter abstain from such unlawful practice.

By the Commission, Division 6:

[SEAL] GEORGE B. MCGINTY,
Secretary.

196 *Appendix C to complaint*

BEFORE THE INTERSTATE COMMERCE COMMISSION

Ex Parte No. 104, Part II

CELOTEX COMPANY TERMINAL ALLOWANCE—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES—TERMINAL SERVICES

PETITION FOR REHEARING

Now come The Celotex Company and Colin C. Bell and Wm. Tracy Alden, Trustees of the Estate of The Celotex Company (hereinafter for brevity referred to as petitioner), who are engaged in the manufacture and in the sale and shipment of pulpboard, fibreboard, and wallboard by railroad, with principal operating office and plant at Marrero, Louisiana, and respectfully petition the Commission to vacate and set aside its "twenty-third supplemental report" and order issued under date of July 11, 1935, in the above entitled proceedings.

Petitioner further petitions the Commission to set aside its "original" report entered under date of May 14, 1935, in the above
197 entitled proceeding, which is referred to in said twenty-third supplemental report as announcing certain principles, which ostensibly are applied in said twenty-third supplemental report to the plant of your petitioner.

Petitioner further petitions the Commission to grant a rehearing in the above entitled proceedings insofar as they relate directly or indirectly to the industry of the petitioner herein.

In that behalf, petitioner respectfully states:

ASSIGNMENTS OF ERROR AGAINST TWENTY-THIRD SUPPLEMENTAL REPORT

The aforesaid twenty-third supplemental report is erroneous in the following particular respects:

1. The finding and conclusion is erroneous that the transportation service which it is the duty of respondent carriers to perform for petitioner, under the interstate line-haul rates, begins and ends at the so-called interchange tracks referred to in the report as being described of record, and that the service performed by petitioner within its plant and beyond such so-called interchange tracks is a plant service, which it is not the duty of the respondent carriers to perform. The evidence does not support such conclusion. The facts and the law are otherwise.

2. The finding and conclusion is erroneous that by the payment of an allowance to petitioner, for the service aforesaid, the re-
198 spondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally; and the further finding and conclusion is erroneous that thereby

respondents remit a portion of the charges collected or received as compensation for the transportation of property, in violation of paragraph (7) of section 6 of the Act. There is no evidence to support these conclusions. Moreover, under no circumstances would such payments, provided in respondents' schedules on file with the Commission, constitute a violation of section 6, paragraph (7) of the Act.

3. The report is erroneous in respect of the Commission's failure to find and conclude, as a matter of law, that under the universal custom and practice of the railroads and under their tariffs published and on file with the Commission, it is the duty of respondents, and each of them, (a) to deliver carload freight consigned and moving to the petitioner by placing the car, wherein such freight is transported, at any point reasonably convenient for the unloading and removal of the freight from the car on the standard gauge tracks serving such plant; and to remove the empty car therefrom after the freight has been received and unloaded by petitioner as consignee; (b) to provide and furnish suitable cars for the transportation of plupboard, fibreboard, wallboard, and other commodities desired to be shipped by petitioner; to place the said cars at points reasonably accessible and convenient for loading on such standard gauge tracks serving the plant of petitioner; and after
199 the freight has been loaded in said cars by petitioner, to remove the same and transport the goods therein to the destinations to which the shipments are consigned; and (c) that all of such aforesaid services are included within the carload freight rates established and maintained by respondents in their tariffs, or in tariffs to which they are parties.

4. The report is erroneous by reason of the Commission's failure to conclude and find, from the uncontradicted evidence in the record, that the allowance paid petitoner by respondents is compensation for services of transportation performed by petitioner on behalf of respondents and at their request and is lawful under paragraph (13) of section 15 of the Act.

5. The report is erroneous in regarding the aforesaid allowance as a dissipation of carrier revenues and as an unlawful payment, because it is against the uncontradicted testimony of the witnesses for respondents and for petitioner, being the only evidence of record in relation to the matters; and such uncontradicted testimony of respondents is that the allowance paid is less than it would cost the respondents to perform by their own instrumentalities and employees, the services which they are obligated under their tariffs to perform at this industry.

6. The report is erroneous in its statement of alleged conditions at the petitioner's plant and in its statement of the history of the subject matter, the services performed and the granting of the allowance.

200 7. The report is erroneous because it is against the manifest weight of the evidence and because there is no substantial evidence to support the findings and conclusions.

8. The report and order are erroneous as applied to the future, because the conditions have substantially changed since the testimony was taken, the record of testimony having closed as to this industry in May 1932.

9. Petitioner has not had a full, fair and impartial hearing and the Commission has not conducted the investigation of the subject matter of said twenty-third supplemental report which is required by paragraph (2) of section 13 of the Act.

10. The report is erroneous, even in the light of the general findings and conclusions of the so-called original report of May 14, 1935.

That is to say, if it be the law, as set forth in said original report, that:

"When a carrier is prevented from performing an uninterrupted service to the points of loading or unloading within the confines of an industrial plant because of some action or disability of the industry or its plant, the carrier's duty with respect to the delivery or receipt of cars does not extend beyond the point of interruption or interference,"

petitioner submits there is no interruption or interference encountered at petitioner's plant, or which would be encountered if

201 respondents performed the service, which would make the allowance to petitioner unlawful under such statement of the law.

Furthermore, if it be the law that:

"At many industries delivery and receipt of freight is effected by carriers on interchange tracks because of interference or interruption to the work of both the industry and the carrier which would be encountered beyond such tracks. Under such circumstances, delivery or receipt on such tracks constitutes delivery or receipt under the line-haul rates."

petitioner's industry is not one where delivery and receipt of the cars containing the freight is effected on interchange tracks, because of interference or interruption to the work, either of the industry, or of the carriers, which would be encountered beyond such tracks.

Furthermore, if it be the law that:

"When the spotting service at an industry requires a service in excess of that required in making simple placement or the equivalent of team track spotting, such service is in excess of that required of a common carrier under its line-haul rate,"

petitioner further submits that the so-called spotting service at its industry does not require a service in excess of that involved in making so-called simple placement, or in excess of the equivalent of team track spotting, but involves less service and less expense than team track deliveries as made by respondents.

Moreover, petitioner does not accept the foregoing statements, taken from the main report in said proceeding, as correctly stating the law, under the custom and practice and tariff provisions
202 of the class I carriers of the United States, established in the uncontradicted testimony of record.

11. The Commission erred, in its said supplemental report, in disregarding the evidence that the respondent carriers submitted the matter of the aforesaid allowance to the Commission informally, for the information and approval of the Commission, before the said allowance was made effective.

12. The particular finding is erroneous, in paragraph 1, sheet 3, of the twenty-third supplemental report, mimeographed, which states that these (plant locomotive, a tractor or similar instrumentality) are necessary facilities for carrying on the Celotex Company's industrial work and their use prevents interference with plant operations, which would result by the operation of the T. & N. O. or Terminal locomotives within the respective parts of the plant to which those carriers have access. The evidence does not sustain this statement.

13. The particular conclusion is erroneous, paragraph 2 on sheet 3 of the mimeographed report, where the Commission states that:

"Interchange between the two carriers could be made only at a switching charge."

14. The particular conclusion is erroneous, in paragraph 2 on sheet 4 of the mimeographed report:

"In this case the industrial layout is such that neither the T. & N. O. nor the Terminal acting for the Missouri Pacific and/or
203 the Texas & Pacific could perform the service for which the allowance is paid."

15. The particular findings are erroneous, in paragraph 3 on sheet 4 of the mimeographed report:

"We find that the respective interchange tracks as described of record are reasonably convenient points for the delivery and receipt of carload freight; that the transportation service for which the respondent carriers are compensated in their line-haul rates begins and ends at said interchange tracks; that the service performed by the Celotex Company beyond those points is a plant service; and that by payment of an allowance to the Celotex Company for service performed beyond the interchange tracks on interstate shipments, respondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally, and refund or remit a portion of the rates collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act."

Petitioner excepts to such statements as fundamentally erroneous.

Wherefore, petitioner prays that the Commission will vacate and set aside its aforesaid twenty-third supplemental report, entered July 11, 1935, and the order attached thereto; that the Commission will reopen said proceeding and grant a rehearing thereof as to the plant

of your petitioner; that the Commission will further vacate and set aside its aforesaid original report in the above entitled pro-
204 ceeding and reconsider the erroneous conclusions of law and of fact therein contained; and that new and appropriate reports and orders shall be entered in said cause, with findings of fact as required by the evidence and as contemplated by the provisions of section 14; and thereupon, that the Commission shall order the dismissal of this proceeding as to petitioner and the approval of such allowance as may not exceed the reasonable cost of performing the services and as just and lawful under paragraph (13) of section 15 of the Act; and for such other action and order in the premises as the Commission may find appropriate and necessary; and your petitioner will ever pray.

Dated at Chicago, Illinois, this 30th day of July, 1935.

THE CELOTEX COMPANY,
and
COLIN C. BELL and
WM. TRACY ALDEN,
Trustees.

By WM. N. WEBB,
General Traffic Manager.

NUEL D. BELNAP,
LUTHER M. WALTER,
JOHN S. BURCHMORE,
Its Attorneys.

WALTER, BURCHMORE & BELNAP,
Of Counsel,
1522 First National Bank Bldg., Chicago, Illinois.

205 CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon respondents named in the order by mailing a copy thereof properly addressed to each party.

Dated at Chicago, Illinois, this 30th day of July, 1935.

JOHN S. BURCHMORE,
Of Counsel for Petitioner.

206 [Omitted.]

207 In United States District Court for the Eastern District of Louisiana, New Orleans Division

In Equity No. 317

GREAT SOUTHERN LUMBER COMPANY, BOGALUSA PAPER COMPANY, INCORPORATED, PLAINTIFFS

vs.

UNITED STATES OF AMERICA, GULF, MOBILE AND NORTHERN RAILROAD COMPANY, DEFENDANTS

Bill of complaint

To the Honorable the Judges of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

Great Southern Lumber Company, a corporation, and Bogalusa Paper Company, Incorporated, a corporation, present this their petition, or bill of complaint, against the United States of America and the Gulf, Mobile and Northern Railroad Company; and thereupon plaintiffs respectfully state:

I

Plaintiff, Great Southern Lumber Company is a corporation organized and existing under the laws of the State of Pennsylvania; and its principal operating office is at Bogalusa, Louisiana, in said State of Louisiana and Eastern District of Louisiana.

208 Plaintiff, Bogalusa Paper Company, Incorporated, is a corporation organized and existing under the laws of the State of Louisiana; and its principal operating office is at Bogalusa, in said State of Louisiana and Eastern District of Louisiana.

II

Defendant, Gulf, Mobile and Northern Railroad Company, is a consolidated corporation organized and existing under the laws of the States of Alabama, Mississippi, and Tennessee, and is engaged as a common carrier in the transportation of property by railroad, in interstate commerce, and as such is subject to the Interstate Commerce Commission Act. It operates certain lines of railroad within the State of Louisiana and in said Eastern District of Louisiana and receives at points of origin on its lines of railroad, as well as from connecting carriers, carload freight for transportation to and delivery at the respective plants of plaintiffs at Bogalusa, Louisiana, as hereinafter referred to, and in like manner receives freight from plaintiffs, and each of them, at their respective plants in Bogalusa for transportation to destinations on its lines, or on the lines of other carriers, all in interstate commerce.

Said defendant is successor in possession and operation of the railroad lines formerly operated by New Orleans Great Northern Railroad Company, including the line to Bogalusa serving the plants of plaintiffs:

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913 (38 Statutes at large 219; 28 U. S. C. A., Sec. 41, Sub-Sec. 45, 46, 47), to enjoin, set aside, annul, suspend, and restrain the enforcement, operation, and execution of an order of the Interstate Commerce Commission entered July 12, 1935, in its docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services; said report and order being subtitled "Twenty-Seventh Supplemental Report of the Commission, Great Southern Lumber Company—Bogalusa Paper Company, Incorporated, Terminal Allowance"; and to enjoin and restrain the said defendant carrier from complying with the aforesaid order of the Commission entered July 12, 1935; and for further relief, as hereinafter prayed for.

IV

Plaintiff, Great Southern Lumber Company operates a saw mill at Bogalusa, Louisiana from which it ships lumber and lumber articles in carloads to various destinations in other states in the United States over the lines of defendant carrier and to which carload shipments of freight move from points of origin in other states.

Likewise plaintiff, Bogalusa Paper Company, Incorporated, operates a paper mill at Bogalusa, Louisiana, from which it ships paper and paper articles in carloads to various destinations in other states in the United States over the lines of defendant carrier and to which carload shipments of freight move from points of origin in other states.

Adjacent to aforesaid plants of plaintiffs at Bogalusa, Louisiana, are situated other manufacturing establishments, namely, factories or plants of Gaylord Bag & Paper Company, New Orleans Corrugated Box Company, Incorporated, and Union Bag & Paper Corporation. These three companies are wholly independent of plaintiffs, and each of them, in ownership and operation, and each ships and receives large quantities of carload freight moving over the lines of the carrier defendant in interstate commerce. They are referred to hereinafter for brevity and convenience as the adjacent plants.

The adjacent plants, as aforesaid, are served by so-called private side tracks to which defendant carrier has access by using tracks owned by plaintiffs, and not otherwise.

V

On July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as Ex Parte 104, and assigned the same for hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal service which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the
211 transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a session at New Orleans, Louisiana, on May 9 to 12, 1932. At these various hearings witnesses appeared, gave oral testimony and filed documentary evidence purporting to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties, not including the plaintiffs or the carrier defendant herein.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiffs, by Gulf, Mobile and Northern Railroad Company and by others; oral argument was had; and thereupon the Commission issued its report and order, dated May 14, 1935, in which the Commission set forth its legal conclusions with respect to the general situation presented. Various supplemental reports thereto were issued on said date; and on later dates further supplemental reports were issued, among others, the Twenty-Seventh Supplemental Report, dated July 12, 1935, in which the Commission set forth its report and requirements with reference to the so-called allowance paid to plaintiffs herein.

212 Said original report of the Commission was issued in mimeographed form and later reported in Volume 209 of the Commission's official reports beginning at page 11. A true copy thereof is attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length.

Said Twenty-Seventh Supplemental Report of the Commission together with the order entered in connection therewith, is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

VI

All of the evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiffs to and for the benefit of the railroad defendant, and its connections, in the transportation of carload freight at, to and from Bogalusa, Louisiana, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an examiner, at New Orleans, Louisiana, May 10, 1932.

VII

The uniform custom and practice of all common carrier railroads, in the State of Louisiana, in adjacent states, and in other states throughout the United States, including the defendant carrier, is to state in their rate schedules published and filed with the Interstate Commerce Commission, the city, town, or other station locality to and from which they undertake to transport freight at the rates and charges in such tariffs set forth, without stating the pre-
213 cise spots in such city, town, or station locality at which they undertake to receive or deliver such freight.

Under such tariffs it is, and for many years past has been, the uniform custom and practice of all railroad companies, including defendant and its connections, to include within the carload freight rates established and maintained for the transportation of carload freight, the complete service comprehended in (a) the providing and furnishing of a suitable car for transportation and the placement of the car at any point reasonably accessible and convenient for loading on standard gauge tracks serving any and all industrial plants; and after the freight has been loaded in said cars by consignor, to remove the same and transport goods therein to destination; and (b) to deliver the carload freight by placing the car, wherein such freight is transported, at any point reasonably convenient for the unloading and removal of the freight from the car on the standard gauge tracks serving any and all industrial plants, and to remove the empty car therefrom after the freight has been received and unloaded by the consignee. The only departures from such custom and practice are where specific exceptions are provided in the tariffs.

It is customary for railroads, for various reasons, sometimes to employ other railroad companies to complete their undertaking to spot the cars or place the cars, as aforesaid, and to pay such other railroads for such service; and sometimes to employ the shipper or receiver of the freight, or other agent or agency, to complete such undertaking in the spotting or placing of the cars as aforesaid, and in such cases to compensate by payments, sometimes termed allowances, to such shippers and receivers of freight for such service.

214 Defendant carrier and its predecessor, New Orleans Great Northern Railroad Company followed generally such custom in serving shippers and receivers of freight on their aforesaid lines of railroad.

Pursuant to such custom, defendant, Gulf, Mobile and Northern Railroad Company (together with its aforesaid predecessor) has always provided in its tariffs that, for the compensation afforded by its established rates for transportation between designated cities, towns, or other station localities, it would deliver and receive carload freight by the placing of the cars at any reasonable and convenient point for the loading or unloading thereof on the tracks serving the said plants of plaintiffs, and each of them, at Bogalusa, Louisiana, the same as at all plants, industries, saw mills, and business establishments adjacent to its railroad and served by so-called private or industrial tracks, as well as so-called public team tracks.

The duly filed and published tariffs of defendant, Gulf, Mobile and Northern Railroad Company, and all other railroad carriers in the State of Louisiana, and in other states of the United States, as in effect now and for more than twenty years past, have named rates for transportation covering the complete services described in this section of this bill of complaint, with respect to carload freight moving to and from any and all railroad terminals and industries, plants, saw mills, warehouses, or other business establishments; and the name rates have been applicable and have been applied by all of said carriers, whether carload shipments of freight originated on so-called public team tracks, or on so-called private side tracks, as aforesaid.

215 VIII

The record in the aforesaid investigation by the Commission in Ex Parte 104, Part II, contains abundant testimony by numerous witnesses supporting the averments in paragraph VII hereof; and there is no evidence in such record to the contrary.

There is no evidence whatsoever in said record that the railroad carriers, respondents thereto, in serving any industry, plant, saw mill, warehouse or other business establishment have sought to limit their duty or terminate their obligation under the line-haul freight rates by placement of cars at any point thereof intermediate to the place mutually agreed upon with a shipper or consignee as reasonable and convenient for the loading or unloading of carload freight.

The averments of this section of this bill of complaint are made by plaintiffs, and each of them, on information and best belief and based upon the advice of counsel.

IX

Plaintiff, Great Southern Lumber Company, for several years past has furnished certain facilities and instrumentalities and men, employed on behalf of defendant carrier, in moving empty cars and cars containing freight between the main line of said defendant carrier at Bogalusa and convenient points of loading or unloading of said freight in said plants of plaintiffs and adjacent plants. This was done by virtue of an arrangement between the defendant carrier (and its aforesaid predecessor), on the one hand and said plaintiff Great Southern Lumber Company on the other hand,
whereby said defendant carrier reimbursed said plaintiff
216 monthly with an amount equal to a part of the wages of switch and engine crews and actual cost of materials and supplies used in the operation of switch engine or engines employed in such service. Such payments were in lump sums, monthly, not predicated on the number of cars handled, and with no separation or distinction as to whether the work done was on cars handled to and from the plants of Great Southern Lumber Company or Bogalusa Paper Company, Incorporated, or the adjacent industries.

Plaintiff Great Southern Lumber Company was advised that under the provisions of the Interstate Commerce Commission Act and the regulations of the Interstate Commerce Commission it was not required that such operating arrangement or such lump sum payments in reimbursement for actual expenses thereunder be provided for in tariffs on file with the Commission.

The sums received by said plaintiff and paid by said defendant carrier under the foregoing arrangement have been less than the actual cost to said plaintiff of furnishing facilities and paying men for the account of said defendant carrier and particularly have included no item of allowance for supervision, accounting, or incidental expenses.

The amounts so paid said plaintiff by said defendant carrier have been less than it would have cost said defendant carrier to furnish the facilities and do the work covered by said payments; and this is established by the uncontradicted evidence of record before the Interstate Commerce Commission in such proceeding Ex Parte No. 104, Part II.

217 X

Defendant carrier has filed with the Interstate Commerce Commission a tariff schedule to become effective August 29, 1935, known and described as Supplement 28 to I. C. C. 1168, Gulf, Mobile and Northern Railroad Company. It provides in part, as follows:

"Item 473 (Addition-Reduction).

Terminal Allowances to the Great Southern Lumber Company and (or) Bogalusa Paper Company, Incorporated, Gaylord Bag and Paper Company, New Orleans Corrugated Box Company, Bogalusa Turpentine Company, Union Bag & Paper Corporation, at Bogalusa, Louisiana

The above named industries are located within an industrial area within the switching limits of the Gulf, Mobile and Northern Railroad Company at Bogalusa, La. The Gulf, Mobile and Northern Railroad Company will perform the terminal switching service at its convenience on carload shipments originating at or destined to the plants of the industries. Such terminal switching service will consist of the handling of cars between the entrance to the industrial area and points convenient to the Gulf, Mobile and Northern Railroad Company adjacent to the plants.

When the Gulf, Mobile and Northern Railroad Company shall employ the industries to perform such terminal switching service for its account it will make an allowance to the industries
218 therefor at the rate of 93 cents per loaded car, and for this allowance the industries shall also handle the empty car in the reverse direction."

If and when the aforesaid schedule becomes effective, on and after August 29, 1935, plaintiffs will be entitled thereby to receive from said defendant carrier, as an allowance specifically provided under paragraph (13) of Section 15 of the Act at the rate of 93-cents per loaded car for services performed and facilities furnished said plaintiffs in the handling of carload shipments to and from the aforesaid plants. The rate of 93-cents per loaded car will not exceed actual cost and will not exceed in the aggregate the payments heretofore made and received.

The aforesaid schedule is in conformity with so much of the Commission's aforesaid Twenty-Seventh Supplemental Report as holds that paragraph 1 of Section 6 of the Interstate Commerce Act requires that every common carrier subject to the provisions of the Act publish its established rates, fares and charges for transportation and likewise state all privileges for facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such rates, fares or charges or the value of the service rendered to the passenger, shipper or consignee; and that the failure to provide by tariff for the payment to plaintiff is in violation of said paragraph of said Act.

Said plaintiff is informed and believes that if there be any question of the legality, in form, of the payments heretofore received by it from said defendant carrier, such question will be resolved and removed by the aforesaid schedule, to become effective August 29, 1935.

219

XI

The aforesaid order of the Commission instituting its investigation Ex Parte No. 104, on its own motion and without formal complaint as set forth in paragraph V of this bill of complaint, was not based on any complaint or application of any sort submitted to the Commission by any person, either carrier or shipper, that the practices above described as in force at plants of plaintiffs were unreasonable, discriminatory or in any way in violation of law, so far as known to petitioner.

In the branch of said proceeding designated as Part II, Terminal Services of Class I railroads, in which the testimony relative to the plants of plaintiffs was taken at New Orleans, Louisiana, during sessions May 9 to 12, 1932, no party, either carrier or shipper, presented any testimony purporting to say that said practices at plants of plaintiffs were unreasonable or discriminatory or otherwise in violation of law in any respect.

An employee of plaintiff Great Southern Lumber Company appeared at said hearing in response to a request or invitation addressed to said plaintiff by the Secretary of said Commission under date of April 18, 1932; and in response to the call of the presiding officer of the Commission, its Director of Service, said employee of said plaintiff became a witness for the Commission and answered questions describing the aforesaid practices at the plants of plaintiffs. No other testimony as to said practices at the plants of plaintiffs was presented, except in behalf of defendant Gulf, Mobile and Northern Railroad Company, which carrier was a party respondent to said proceeding of investigation simply by virture of the Commission's order instituting such investigation and making all so-called

220 Class I railroads of the United States respondents therein; and said respondent Gulf, Mobile and Northern Railroad Company presented its testimony in support of the existing practices at Bogalusa, as satisfactory to it and as proper and lawful.

XII

The said order of July 12, 1935, as set forth in Appendix B hereto is unlawful and void in the following respects:

(1) The Commission was without authority, either in law or in fact, to make the said order.

(2) There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiffs under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of so-called allowance to plaintiffs, and each of them, for service performed by them in moving the cars containing interstate shipments beyond the interchange tracks, defendant provides the means by which each plaintiff enjoys a preferential service not accorded to shippers generally.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for loading at, and removal of loaded car from, point of loading,
221 and placement of loaded car at, and removal of empty car from, point of unloading, within the plants of the plaintiffs.

(5) The evidence on which the order is based shows conclusively that the payments made by the said defendant carrier to plaintiff Great Southern Lumber Company were in reimbursement for materials and labor embraced within the service for which the defendant publishes, charges and receives the rates named in its tariffs filed with the Interstate Commerce Commission; and that the said payments, if regarded as terminal allowances, were no more than just and reasonable.

(6) The evidence wholly fails to show any violation of law by the plaintiffs or the defendant carrier in connection with the so-called allowance at plaintiffs' plants as above described.

(7) The report is not supported by the evidence and is contrary to the manifest weight of the evidence.

(8) The aforesaid report is erroneous, as a matter of law, in stating that the duty of the carrier is fulfilled if it holds itself out to receive and deliver carload freight on convenient interchange tracks.

(9) The aforesaid report is erroneous in stating that the industrial tracks serving these plants are laid with rail which is too light to permit the operation of the locomotives used by the New Orleans Great Northern Railroad Company in switching at Bogalusa. The defendant owns and operates locomotives which are suited to and can operate in said industrial plants.

(10) The aforesaid report is erroneous in stating that serious interference with plant operations would result if respondent carrier should undertake the spotting service; it is erroneous further in stating that the New Orleans Great Northern Railroad Com-
222 pany would not be permitted to operate its locomotives within the plant at its convenience, even though it could physically do so; it is further erroneous in stating that the convenience and industrial needs of the lumber and paper companies can be met only by operation of the industrial locomotives. Such statements are not in accordance with the facts; and they are not supported by the record.

(11) The report is erroneous in respect to numerous other statements of alleged facts which are immaterial, or irrelevant, or not supported by competent testimony.

(12) The Commission did not conduct a full, free and impartial hearing, as required by Section 14 of the Act. Neither plaintiffs nor respondent carrier were informed of the supposed charges against them; and said parties after issuance of aforesaid report protested to the Commission the incompleteness of the record and requested further opportunity to present the correct facts to the Commission, at an appropriate time, which has not been granted.

XIII

Upon the taking effect of the new schedule published by the defendant carrier to become effective on August 29, 1935, as aforesaid, plaintiffs, and each of them, will be entitled to receive as aforesaid, compensation at the rate of 93 cents per loaded car for services performed and facilities furnished by them in respect of transportation for the defendant railroad company.

Plaintiffs are informed that the Interstate Commerce Commission has given notice that it will construe the foregoing tariff provision as in violation of the aforesaid Twenty-Seventh Supplemental
223 report and order thereto attached, issued July 12, 1935, and which commands said Gulf, Mobile and Northern Railroad Company to cease and desist, on or before September 3, 1935, and thereafter to abstain from the practice of making payment as to the plaintiffs for performance of so-called spotting service within their aforesaid industrial plants at Bogalusa.

Unless the aforesaid tariff is permitted by the Commission to become effective, and unless, despite the terms of the aforesaid order of the Commission, the defendant carrier itself performs the placement service with its own facilities and men, plaintiffs will continue to handle empty and loaded cars moving to and from their aforesaid plants on which they should be entitled to compensation; and plaintiffs will be compelled to perform said service of transportation for the benefit of said railroad company but at their own cost and expense, thereby subjecting plaintiffs to irreparable loss and injury.

Plaintiffs handle for defendant railroad company more than one thousand cars per month, on the average, on which the expense borne by plaintiff Great Southern Lumber Company and heretofore borne in part by payments received from the defendant carrier, have been not less than One Thousand Dollars ($1,000) per month, on the average. The expenses which plaintiffs will be compelled to assume and bear if the respondent carrier's aforesaid tariff is not allowed to become effective will be in excess of $1 per car, amounting in the aggregate to more than One Thousand Dollars ($1,000), per month, on the average, thereby subjecting plaintiffs to irreparable loss and injury, as aforesaid.

224 In consideration whereof, forasmuch as plaintiffs have no adequate remedy at law, and may have relief only in a court of equity, plaintiffs pray that this petition be received and filed; that writs of subpoena be issued by the clerk of the court, as provided by law, commanding the United States of America and Gulf, Mobile and Northern Railroad Company to appear and defend this action; that notice hereof be given to the Attorney General of the United States and to the Interstate Commerce Commission; that upon the filing of this bill of complaint the Judge of this court call to his assistance two other Judges, one of whom shall be a Circuit Judge; and that upon five days' notice of the time and place of hearing having been given to the Attorney General of the United States and the Interstate Commerce Commission and to said defendant carrier, the plaintiffs be granted an interlocutory injunction restraining the United States of America and the Interstate Commerce Commission from enforcing the terms of said order, which requires defendant carrier to cease and desist, on or before September 3, 1935, and thereafter to abstain from the practice in said order described; and that upon final hearing of this case, a decree be entered declaring the said order to be in all respects null and void and permanently enjoining, annulling and setting aside the enforcement, operation and execution of said order.

Plaintiffs further pray that a permanent or interlocutory order or injunction be entered restraining the Commission from suspending or interfering with the operation of the aforesaid schedule filed by defendant Gulf, Mobile and Northern Railroad Company, known as Supplement 28 to I. C. C. 1168 in respect of Item 473 therein, and enjoining said defendant from making any application to
225 withdraw, cancel or postpone said schedule; and for such further relief in the premises as the nature of the case shall require, and to this court shall seem meet.

LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
1522 First National Bank Building, Chicago, Ill.,
Solicitors for Plaintiffs.

[*Duly sworn to by Michael J. McMahon; jurat omitted in printing.*]

226 [Appendix A omitted. Printed side page, 22 ante.]

295 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

GREAT SOUTHERN LUMBER COMPANY—BOGALUSA PAPER COMPANY TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Submitted October 17, 1934—Decided July 12, 1935

1. Carrier's obligations under its interstate line-haul rates found not to extend beyond the interchange tracks described of record. Payment for service beyond said tracks found unlawful.
2. The failure to provide by tariff for payments considered herein found to be unlawful.

Same appearances as in the original report.

TWENTY-SEVENTH SUPPLEMENTAL REPORT OF THE COMMISSION

Division 6, Commissioners McManamy, Lee, and Miller

By Division 6: In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced concerning the payment of
296 allowances to industries heard on this record for the performance of spotting service at their industrial plants, or the performance of such service by respondents in lieu of payment. This supplemental report deals with the propriety and lawfulness of payments made by the Gulf, Mobile and Northern Railroad Company to the Great Southern Lumber Company and the Bogalusa Paper Company, for the performance of switching service of those two companies within their plants at Bogalusa, La. The portion of the Gulf, Mobile and Northern which serves Bogalusa and the above companies was at the time of this hearing known as the New Orleans and Great Northern Railroad Company. See Gulf, Mobile & Northern R. Co., Acquisition, 158 I. C. C. 481. It will hereinafter be referred to as the N. O. G. N.

The Great Southern company is engaged in the logging and lumber business and also controls the Bogalusa Paper Company, hereinafter termed the paper company. Together these companies occupy a large industrial area near Bogalusa, La. The paper company's plant is located in the northeastern portion of the industrial property. Small portions of the industrial area are occupied by the New Orleans Corrugated Box Company and the Union Bag & Paper Company. The volume of traffic of the two latter industries is unimportant as compared with that of the two former. The two smaller industries are largely dependent upon the first named companies for raw materials used in the manufacture of their products.

About 100 individual tracks, aggregating about 22 miles of industrial trackage, serve the group of industries. This trackage
297 connects with the main line of the N. O. G. N., which parallels the lumber company's property on the western side; and the lumber company through trackage rights, operates its locomotives over a portion of the N. O. G. N. Practically all of the industrial tracks are laid with 56-pound rail, which is too light to permit the operation of the locomotives used by the N. O. G. N. in switching at Bogalusa.

The N. O. G. N. has four sidings adjoining its main line adjacent to the plant property. About 21 industrial tracks aggregating 54,974 feet in length, located on the plant property, are contiguous to the N. O. G. N. main line. These tracks, termed the South Yard, diverge from a main lead track which connects with the N. O. G. N. near the south end of the industrial property. The perishable materials used in constructing these tracks are owned by the lumber company, and the N. O. G. N. owns the non-perishable materials. Each of the above parties furnishes one-half of the labor necessary in maintenance. Other trackage within the plant consists of 23,188 feet owned by the lumber company, and 23,729 feet owned by the paper company.

The New Orleans Corrugated Box Company and the Union Bag & Paper Company are located on tracks owned by the paper company which are not accessible to the N. O. G. N. over its rails.

The lumber company began operations at this location many years ago, and in the early days, the N. O. G. N. performed all the switching service within the plant. This arrangement was unsatisfactory to the lumber company, and about 1912 it took over the switching and assumed all the cost thereof, which arrangement continued until April 1, 1925. The paper company began
298 operations in 1917, and performed its own switching until the above date, using a locomotive rented from the lumber company. At that time, both industries insisted that the N. O. G. N. should bear some part of the switching cost, but made no request that it perform the service. Between April 1, 1925 and October 1, 1931, the N. O. G. N. assumed part of the cost by compensating both industries for a portion of the wages of the switching crews. Under this arrangement the N. O. G. N. paid wages of one switch engine crew of the lumber company and assumed three-fifths of the wages of the crew of the paper company. Since the latter date, the lumber company has used its own locomotive and performed the service of spotting cars for itself and the other three companies, being reimbursed by the N. O. G. N. for the cost of such service. Such cost includes wages of the crew, supplies, fuel, and repairs for the locomotive, and depreciation of 10 per cent on the value of the locomotive. This payment is not covered by the respondent carrier's tariffs. An exhibit of record shows that during the month of January, 1932, 1,209 cars were handled at an average cost of 8.2 cents per car.

The record is not clear as to the points of delivery and receipt of cars by the N. O. G. N. under the various methods of switching operations prior to October 1, 1931. At present the N. O. G. N. classifies and delivers loaded and empty cars on tracks in the South Yard designated by the lumber company for interchange, and such cars are then moved at the convenience of the lumber company by its locomotives to the points of loading or unloading scattered throughout the plant. Outbound shipments are handled in a similar manner in the reverse direction. Cars for the paper company are
299 generally delivered and received on its private track which parallels the lead track to the South Yard. For demurrage purposes cars are not considered as under the control of the industry until such time as they are actually spotted at the point of loading or unloading as the case may be, which is contrary to the provisions of the demurrage tariff. Intraplant switching consists of the movements of cars by the lumber company's locomotives between points within the plant, and the delivery to the mills of cars loaded with logs.

The spotting for which the N. O. G. N. assumes the cost, requires 12 hours daily, except Sundays. During the first four months of 1930, 1931, and 1932, a daily average of 46 loaded cars both inbound and outbound was handled at those plants. It is clear that the N. O. G. N. cannot reasonably be required to pay the costs of operating a locomotive 12 hours daily in handling this number of cars and that the service required is in excess of any service the respondent is obligated to perform under its line-haul rates.

It is also definitely established that serious interference with plant operations would result if respondent should undertake the spotting service; that the N. O. G. N. would not be permitted to operate its locomotives within the plants at its convenience, even though it could physically do so; and that the convenience and industrial needs of the lumber and paper companies can be met only by the operation of the industrial locomotives.

The law is well settled that no legal obligation rests upon the carrier to perform switching and spotting service solely at the convenience of the industry. Car Spotting Charges, 34 I. C. C.
300 609, 617; Merchants Shipbuilding Corp. v. Pennsylvania R. Co., 61 I. C. C. 214, 217. Moreover, where the facilities of an industry are unsafe for the operation of the carrier's engines, as in the instant case, the duty of the carrier is fulfilled if it holds itself out to receive and deliver carload freight on convenient interchange tracks. Sharon Steel Hoop Co. v. Pennsylvania R. Co., 59 I. C. C. 378; Mumby Lbr. & Shingle Co. v. Chicago, M. St. P. & P. R. Co., 200 I. C. C. 261, 263.

Section 6 (1) requires that every common carrier subject to the provisions of the act publish its established rates, fares, and charges for transportation, and likewise state all privileges or facilities granted or allowed and any rules or regulations which in anywise

change, affect, or determine any part of the aggregate of such rates, fares or charges, or the value of the service rendered to the passenger, shipper, or consignee. Clearly the value of the service here considered, is affected by the reimbursement made to the industries by the N. O. G. N. The failure to provide by tariff for this payment is in violation of the act, and we so find.

We further find that the transportation service which it is the duty of respondent carrier to perform under its interstate line-haul rates begins and ends at the interchange track described of record; that the service for which payment herein considered is made, is a plant service which respondent is not obligated to perform under the line-haul rates; and that by such payment the respondent carrier provides the means by which the industry enjoys a preferential service not accorded to shippers generally, and refunds or remits a portion of the rates or charges collected or received as com-
301 pensation for the transportation of property, in violation of section 6 (7) of the act.

An appropriate order will be entered.

ORDER

At a session of the Interstate Commerce Commission, Division 6, held at its office in Washington, D. C., on the 12th day of July, A. D. 1935.

GREAT SOUTHERN LUMBER COMPANY—BOGALUSA PAPER COMPANY TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of payments made by the Gulf, Mobile and Northern Railroad Company, to the Great Southern Lumber Company and the Bogalusa Paper Company, for performance of spotting service within their industrial plants at Bogalusa, La., and the Commission having under date of May 14, 1935, made and filed a report, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions with respect to the payments made to the above-named companies, which reports are hereby referred to and made a part hereof, and the division having found in
302 said supplemental report that by such payments, the Gulf, Mobile and Northern Railroad Company violates the Interstate Commerce Act, as set forth in the above-mentioned reports:

It is ordered, That the Gulf, Mobile and Northern Railroad Company be, and it is hereby, notified and required to cease and desist on or before September 3, 1935, and thereafter to abstain from such unlawful practice.

By the Commission, Division 6:

GEORGE B. McGINTY,
Secretary.

[SEAL]

303 [Omitted.]

304 In United States District Court for the Eastern District of Louisiana, Baton Rouge Division

In Equity No. 331

STANDARD OIL COMPANY OF LOUISIANA, PLAINTIFFS

vs.

UNITED STATES OF AMERICA, ILLINOIS CENTRAL RAILROAD COMPANY, THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, LOUISIANA & ARKANSAS RAILWAY COMPANY, AND NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES), DEFENDANTS

Bill of complaint

To the Honorable the Judges of the District Court of the United States for the Eastern District of Louisiana, Baton Rouge Division:

Standard Oil Company of Louisiana, a corporation organized and existing under the laws of the State of Louisiana, with its domicile at Baton Rouge, Louisiana, and a citizen of the State of Louisi-
305 ana, presents this its bill of complain' against United States of America; Illinois Central Railroad Company; The Yazoo and Mississippi Valley Railroad Company; Louisiana & Arkansas Railway Company; and New Orleans, Texas & Mexico Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees), and thereupon plaintiff respectfully says:

I

Plaintiff, Standard Oil Company of Louisiana, is a corporation organized and existing under the laws of the State of Louisiana, is engaged in the refining of petroleum and the production of various articles therefrom which are distributed by rail in carload lots in interstate commerce in various states of the United States other than Louisiana. In the conduct of its business plaintiff receives various commodities in carload shipments moving in interstate commerce to plaintiff's refinery at North Baton Rouge, Louisiana, from points of origin in the United States outside of the State of Louisiana. Plaintiff is a citizen of Louisiana.

II

Illinois Central Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office at Chicago, Illinois, and is a citizen of said state.

The Yazoo and Mississippi Valley Railroad Company is a corporation organized and existing under the laws of the States of Louisiana, Tennessee, and Mississippi and has its principal office and place of business at New Orleans, Louisiana, and is a citizen of the State of Louisiana. The capital stock of said defendant is owned by the Illinois Central Railroad Company, and con-
306 trol under such stock ownership is vested in said Illinois Central Railroad Company.

Louisiana & Arkansas Railway Company is a corporation duly organized and existing under the laws of the State of Delaware, with its principal office and place of business at Shreveport, Louisiana. Said defendant is a citizen of the State of Delaware and a resident of Louisiana.

New Orleans, Texas & Mexico Railway Company is a corporation organized and existing under the laws of the state of Texas with its principal operating office at Houston, Texas, the properties of which are now in the custody of L. W. Baldwin and Guy A. Thompson, appointed by the District Court of the United States for Eastern District of Missouri, Eastern Division, as trustees under Section 77 of the Federal Bankruptcy Act. Said defendant is a citizen of the state of Texas and a resident of the state of Louisiana.

The defendants, other than the United States of America, are common carriers by railroad of interstate commerce and as such are subject to the interstate commerce act. Each of them owns and operates lines of railroad within the state of Louisiana and through ownership or operating agreements each of the defendant railroad companies receive interstate freight for delivery at plaintiff's plant at North Baton Rouge, Louisiana, and in like manner receive freight from plaintiff at its said plant, for transportation to interstate destinations.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act approved Octo-
307 ber 22, 1913, to enjoin, set aside, annul, suspend, and restrain the enforcement, operation, and execution of an order of the Interstate Commerce Commission entered May 14, 1935, in its docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services; and to enjoin and restrain the defendants, other than the United States of America, from the cancellation of tariffs filed with the Interstate Commerce Commission authorizing and requiring an allowance of $1.20 per loaded car for service connected with the transportation of property and for the furnishing of instrumentalities used in such transporta-

tion at plaintiff's plant in North Baton Rouge, Louisiana, alleged to be required by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel, or in any manner depart from the allowances for transportation service set forth in tariffs on file with the Interstate Commerce Commission for services and facilities in transportation at plaintiff's plant in North Baton Rouge, Louisiana, or to make any effort to modify or change said tariffs in order to comply with the requirements of the said order, as more fully hereinafter set forth, and to set aside and hold for naught any and all acts of said defendants, or any of them, performed and done under or in alleged conformity with said order of the Interstate Commerce Commission dated May 14, 1935.

IV

Defendant railroad companies by lawful tariffs on file with the Interstate Commerce Commission, have published rates and charges for the transportation of property to and from the spurs, sidings, tracks, and loading and unloading points in the plant of the plaintiff at North Baton Rouge, Louisiana, which rates and charges, so filed and established, contemplate the placement of the empty car
308 at the place of loading and the removal of the loaded car therefrom, and its transportation over the lines of the defendants and their connections to consignee at final destination of said shipment and also in like manner contemplate the placing of the inbound loaded car at the final point of unloading in the plant of the plaintiff and the removal of the empty car therefrom.

Plaintiff demanded of the defendant railroad companies that they and each of them perform their duty under the law as set forth in Paragraph IX hereof by transferring empty and loaded cars to and from loading and unloading points in plaintiff's said plant. Defendant railroad companies, in accordance with the requirements of the law, and in the performance of their duty under the law, elected to have plaintiff to perform the terminal services at its said plant. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between interchange tracks and points of loading and unloading in plaintiff's said plant.

Each of the defendant railroad companies now has, and for several years has had, on file with the Interstate Commerce Commission in accordance with the provisions of Section 6 of the Interstate Commerce Act, its joint and several tariffs authorizing and requiring the payment to the plaintiff of $1.20 per loaded car therein named as "terminal allowances," for services performed and facilities furnished by plaintiff in connection with transportation of carload traffic to and from loading and unloading points on appropriate spurs and sidings in plaintiff's plant at North Baton Rouge, Louisiana, viz: L. & A. tariff 1789–K, ICC 1382, Item 385; Y. & M. V. tariff No. 2–B, ICC 6700, added page 171–A; and N. O. T. & M. Railway tariff No. 487–G, ICC No. A–1017, Item 415.

309 The amount of such allowance is less than the cost to plaintiff of performing the aforesaid service, and is less than it would cost the defendant railroad companies, or either of them, to perform the service with their own engines and employees; such allowance, therefore, is not in excess of a just and reasonable allowance, and is lawful under Paragraph 13 of Section 15 of the Interstate Commerce Act.

V

On July 6, 1931, the Interstate Commerce Commission, under a proceeding of inquiry, designated as Ex Parte 104, on its own motion, without formal pleading, initiated a proceeding of inquiry and assigned the same for hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions
310 made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a hearing at New Orleans, Louisiana, on May 11 and 12, 1932. At these various hearings witnesses appeared, gave oral testimony and filed documentary evidence purporting to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties, including the plaintiff.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff and others, oral argument was had and thereupon the Commission issued its report and order, dated May 14, 1935, in which the Commission set forth its legal conclusions with respect to the general situation presented; various supplemental reports thereto were issued, among others, the fifth supplemental report in which the Commission set forth its report and requirements with reference to the allowance paid to the plaintiff, as will more particu-

larly hereinafter appear. Said report of the Commission is attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length. The Fifth Supplemental report of the Commission is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

On June 12, 1935, plaintiff filed its motion with the Interstate Commerce Commission asking the Commission to vacate its said order or to postpone the effective date of said order for not less than six
311 days, or for such other period as the Commission may find appropriate and necessary. Said motion was denied on July 1, 1935. Thereafter on July 6, 1935, plaintiff filed its petition with said Commission pointing out various errors of fact and law in the said reports of the Commission and asking for a rehearing and reconsideration of the issues involved in said proceedings. Said petition is as yet not acted upon.

VI

The evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants, and their connections, in the transportation of carload freight at, to, and from North Baton Rouge, Louisiana, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an examiner, at New Orleans, La., May 11 and 12, 1932.

VII

The said order of the Interstate Commerce Commission, dated, May 14, 1935, is as follows:

ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of May, A. D. 1935.

STANDARD OIL COMPANY OF LOUISIANA TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Upon further consideration of the record in this proceeding
312 concerning the lawfulness and propriety of the allowance paid by The Yazoo and Mississippi Valley Railroad Company, the Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company to the Standard Oil Company of Louisiana for performance by the latter of spotting service within its plant at North Baton Rouge, La., and the Commission having on the date hereof, made and filed a report containing its legal conclusions with respect to the general situation presented, and also having on the

date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Standard Oil Company of Louisiana, which reports are hereby referred to and made a part hereof, and the Commission having found in said supplemental report that by the payment of said allowance the above-named respondent carriers violate the Interstate Commerce Act as set forth in the above-mentioned reports:

It is ordered, That The Yazoo & Mississippi Valley Railroad Company, the Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company be, and they are hereby, notified and required to cease and desist on or before July 15, 1935, and thereafter to abstain from such unlawful practice.

By the Commission.

[SEAL] GEORGE B. MCGINTY,
Secretary.

VIII

In alleged conformity with said order of May 14, 1935, the various railroad defendants filed their several tariffs, as follows:

The Yazoo and Mississippi Valley Railroad Company, de-
313 fendant herein, filed with the Interstate Commerce Commission first revised page 171-a of its tariff No. 2-B, I. C. C. No. 6700, effective July 15, 1935, cancelling its tariff then on file with the Interstate Commerce Commission granting a terminal allowance of $1.20 per loaded car to plaintiff as defined in the Commission's fifth supplemental report, "Appendix B" hereto.

The defendant, Louisiana & Arkansas Railway Company filed its supplement No. 42, Item No. 385-A, to its tariff No. 1789-K, I. C. C. No. 1382, effective July 15, 1935, cancelling the terminal allowance paid by said carrier to plaintiff of $1.20 per loaded car, as more particularly defined in the Commission's fifth supplemental report, "Appendix B" hereto.

Defendant, New Orleans, Texas & Mexico Railway Company filed its tariff, Supplement No. 42, Item 415-A, to its tariff No. 487-G, I. C. C. No. A-1017, cancelling terminal allowances paid by said defendant to plaintiff of $1.20 per loaded car, as more particularly appears in the fifth supplemental report, "Appendix B" hereto.

Thereafter, plaintiff filed its various separate petitions with the Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act, seeking a suspension of the said tariffs to the extent they purport, in alleged compliance with said order of May 14, 1935, to cancel the terminal allowance to plaintiff for facilities furnished and services performed by it at its plant at North Baton Rouge, Louisiana. So far no action has been taken on said petitions.

IX

Section 1 of the Interstate Commerce Act, U. S. Code, title 49, Sec. 1, 41 Stat. L., 474, provides:

314 "(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, * * *.

(2) The provisions of this Act shall also apply to such transportation of passengers and property * * * but only in so far as such transportation * * * takes place within the United States, * * *.

(3) The term 'common carrier' as used in this Act shall include * * * all persons, natural or artificial, engaged in such transportation * * * as aforesaid as common carriers for hire. * * * The term 'railroad' as used in this Act shall include all * * * the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of * * * property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. * * *

(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of * * * property to
315 provide and furnish such transportation upon reasonable request therefor, * * *"

Section 6 provides:

"(1) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, * * * when a through route and joint rate have been established. * * * The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property * * * will be carried, * * * and shall also state separately all terminal charges, * * * and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any-wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee. * * * The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act. * * *

(7) No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of * * * property, as defined in this Act, unless the rates, * * * and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of * * * property, or for any service in connection therewith, between the points named in such tariffs than the rates, * * * and charges
316 which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, * * * and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15, paragraph 13, provides:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Act of Congress approved February 19, 1903, as amended June 29, 1906 (U. S. Code, title 49, Sec. 41, 32 Stat. L. 847, provides; Section 1:

"The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, * * * and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in inter-
317 state or foreign commerce by any common carrier subject to said Act to regulate commerce, and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. * * * Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or

published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act."

X

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of May 14, 1935, was issued.

XI

Inasmuch as the order of May 14, 1935, in alleged conformity with which the tariffs referred to in Paragraph IX hereof were filed, canceling the terminal allowances to the plaintiff is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of, will not grant full measure of relief to this plaintiff, unless all action which has been taken by the individual railroad defendants be set aside and held for naught, thereby restoring and making effective the lawful terminal allowances in effect on May 13, 1935.

318

XII

The said order of May 14, 1935, as above set forth, is unlawful and void in the following respects:

1. The Commission was without authority, either in law or in fact, to make the said order.

2. There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally;

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for load at, and removal of loaded car from, point of loading,
319 and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

(5) The evidence on which the order is based shows conclusively that the terminal allowance paid by the defendant railroad companies to plaintiff is for a transportation service embraced within the service for which the defendant railroad companies publish, charge, and receive the rates named in their tariffs filed with the Interstate Commerce Commission; that the said terminal allowance is no more than just and reasonable and, being published in the tariffs of the defendant railroad companies, is just as binding upon the defendant railroad companies as is any rate named in their tariffs to be collected for the transpotration of property by them in interstate commerce.

(6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant railroad companies in connection with the terminal allowance at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowances named in the tariffs of the defendant railroad companies is Paragraph 7 of Section 6; as stated by Commissioner Mahaffie in his dissenting report, so long as the allowance is named in the tariffs of the defendants it must be paid. The record wholly fails to show any violation of Section 6, Paragraph 7.

XIII

Further, plaintiff shows that prior to 1905 the question had arisen as to the Commission's power over allowances to shippers for services performed and facilities furnished by them for carriers subject
320 to the Interstate Commerce Act. In its annual report to the Congress in 1905 the Commission said:

"Terminal roads, elevator charges, and private cars.

"There is an important class of cases in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like property. This may happen to any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such performance may take the from of an excessive division to a terminal road owned by the shipper; the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less

resorted to for the purpose or with the effect of preferring one shipper to another. It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the services can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public, if provided by the shipper itself. We do think, however, that the commission should be empowered in a case of this kind to determine whether the allow-
321 ance to the property owner is just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Thereupon on June 29, 1906, 34 Statute 584, Section 1 of the Interstate Commerce Act was amended so that the term "railroad" should include—

"all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

The section was further amended so that the term "transportation" includes—

"All services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration, icing, storing, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act, to provide and furnish such transportation upon reasonable request therefor."

Section 6 was amended so as to require the schedules of rates filed by carriers to "state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed." Section 6 was further amended by the addition of the following to Paragraph (7): "Nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges
322 so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15 was amended by the addition of the following paragraph:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Commission has no power to prohibit defendant railroad companies from employing plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad companies to plaintiff for service and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of May 14, 1935, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

323

XIV

Plaintiff has handled, and will continue to handle for the defendant railroad companies, loaded cars on which the terminal allowance payable to the plaintiff in accordance with the tariffs of the railroad defendants amount in the aggregate to not less than Two Thousand Dollars ($2,000) monthly. Unless the order of the Commission be set aside and the defendant railroad companies be required to withdraw their canceling tariffs, plaintiff will be compelled to perform the service of transporting from the interchange track the empty car to and the loaded car from the point of loading, and the inbound loaded car, from the interchange track, to and the empty car from the point of unloading to interchange tracks with the defendant railroad companies, for which transportation plaintiff will be compelled to assume an expense in excess of $1.20 per car more than if said terminal allowances were not canceled, amounting in the aggregate excess to more than Two Thousand Dollars ($2,000) monthly, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiff is remediless in the premises at law, and relievable only in a court of equity, plaintiff prays that a preliminary or interlocutory order or injunction be entered, restraining and suspending the enforcement, operation and execution of the said order of the Interstate Commerce Commission of May 14, 1935, until final determination of this cause, and

that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling and setting aside the enforcement, operation, and execution of said order.

Plaintiff further prays that a preliminary or interlocutory
324 order or injunction be entered, requiring the railroad defendants, and each of them, to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission and suspending the cancellation of the terminal allowance now being paid plaintiff until final determination of this cause and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the said tariffs, and requiring the said defendants to file new tariffs restoring the terminal allowances in effect on May 13, 1935, on interstate traffic handled by the plaintiff at its said plant in North Baton Rouge, Louisiana, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of May 14, 1935, and to restore the status quo of May 13, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad defendants, and each of them, to vacate, annul and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of May 13, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiff further prays, that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of
complaint be forthwith served upon each and every of the
325 defendants herein named, in the manner provided in the Acts of Congress, and your plaintiff will ever pray.

NUEL D. BELNAP,
JOHN S. BURCHMORE,
LUTHER M. WALTER,
1522 First National Bank Bldg., Chicago, Ill.,
Solicitors for Plaintiff.

[*Duly sworn to by R. W. J. Flynn; jurat omitted in printing.*]

326 [Appendix A Omitted. Printed side page, 22 ante.]

393 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

STANDARD OIL COMPANY OF LOUISIANA, TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Submitted October 17, 1934—Decided May 14, 1935

Carriers' obligations under their interstate line-haul rates found not to extend beyond the present points of interchange, and payment of an allowance to the industry for service beyond such points found unlawful.

Same appearances as in the original report.

FIFTH SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION: In the original report in this proceeding, propriety of Operating Practices—Terminal Services, decided concurrently herewith, certain principles were announced concerning the payment of allowances for the performance of spotting
394 service at the plants of individual industries heard on this record, or the performance of such service by respondent carriers in lieu thereof. The portion of this proceeding now before us presents the question of whether the Standard Oil Company of Louisiana may lawfully receive compensation in the form of allowances out of the line-haul rates for the performance of spotting service, i. e., the movement of cars beyond the interchange tracks of its oil refinery located at North Baton Rouge, La. This plant, one of the largest of its kind in the world, contains 18.5 miles of standard-gauge tracks, nearly six miles of which, located at the north end of the industrial area, are owned by the Union Tank Car Company, an affiliated company, and used for the storage of tank cars. During 1931, 6,285 cars were received at the plant, and 33,111 were shipped, this volume being about 60 percent of that handled in 1929.

The plant is served by direct track connections with the Y. & M. V.[1] and the L. & A.,[2] formerly the L. R. & N.[3] The Y. & M. V. by contractual arrangement handles traffic of the N. O. T. & M.[4] from the east bank of the Mississippi River at Baton Rouge to the point of connection with the plant tracks, a distance of about three miles, for which it is paid $2.50 per loaded car.

The L. & A. main line traverses the Standard Oil property in a northerly and southerly direction at the east side of the main re-

[1] The Yazoo and Mississippi Valley Railroad Company.
[2] Louisiana & Arkansas Railway Company.
[3] Louisiana Railroad & Navigation Company.
[4] New Orleans, Texas & Mexico Railway Company.

finery area. While interchange of cars between this respondent and the industry is physically possible at several points on the east side, it is usually made at only one yard. The Y. & M. V. main line traverses the property almost parallel with the L. & A.
395 but on the west or opposite side of the refinery, and two interchange yards located on the industrial property are used. All of the points of interchange are closely adjacent to the main refinery area. Inbound cars loaded with caustic soda, steel, lumber, and miscellaneous articles for refinery use are received, as well as tank cars of various capacities. After delivery by respondents in the interchange yards, the cars are classified as to size or lading either in the interchange yards or on tracks nearby, whichever best suits the convenience of the industry, and are then moved by industrial locomotives to the point of loading or unloading, or to storage tracks.

The tracks within the plant are well maintained. There are, however, numerous sharp curves over which large locomotives could not operate, and one track where, on account of the degree of curvature, cars can be spotted only by using other cars as buffers. With some few changes in the track layout the entire plant could be switched by certain types of locomotives owned by both connecting carriers. Inasmuch as the N. O. T. & M. has no track reaching the industry, the type of locomotive required therein or the track conditions are of no consequence to it.

The industry owns five locomotives which are used in moving cars between the interchange yards and the points of loading or unloading, as well as intraplant switching. During times when the refinery is operating at peak capacity, the service of three and at times four locomotives is required on the shift from 7 a. m. to 3 p. m. daily. One, and at times two locomotives are required from 3 p. m. to 11 p. m., and one from 11 p. m. to 7 a. m. Under normal business conditions only one locomotive is used on each shift except from 7 a. m. to 3 p. m. when one or two additional ones are sometimes
396 required. There are 47 loading districts within the plant and 498 cars can be loaded simultaneously. One district consists of a loading rack that permits 100 tank cars to be loaded at one time. The tank cars with a capacity of from 8,000 to 14,000 gallons are ordered for outbound loading by the shipping and order department of the oil company. Empty cars are placed at the loading racks for loading during the night or in the early morning in order that loading may begin at 7 a. m. It appears that ordinarily about two and one-half hours are required to load the tank cars for outbound movement. After loading, the cars are moved, the loading racks are immediately refilled with cars, and these operations continue throughout the day when business conditions justify. Since the classification and movement of the cars beyond the interchange tracks are under the direction and control of the industry, an efficient and orderly operation of the refinery results.

From the time the plant began operations in 1910 until August 1927, the spotting service was performed as at present, by the plant locomotives and no allowance was made. In 1924, the industry requested that respondents perform the spotting service, but the real purpose of the request, as understood by respondents and as shown by the record, was to obtain an allowance for the performance of that service. The industry desired no change in the method of doing the work, but claimed that by custom and because allowances were made to other industries, including Standard Oil companies in other sections of the country, it was entitled to have respondents perform its spotting service or pay an allowance therefor.

From 1924, when demand was made upon respondents to perform the spotting, until 1927, when the industry was granted the
397 allowance in lieu of the performance, the Y. & M. V. declined to perform this service, because it considered it impracticable by reason of the severity of the curvature in the industry tracks, and the proper type of motive power was not available. While the record is not clear as to the L. R. & N.'s position, there is no reason to believe that this carrier favored the proposed change. The N. O. T. & M., for competitive reasons followed the action of the Y. & M. V. in all respects. The most satisfactory type of locomotive for this plant is a saddle-tank oil-burning locomotive, such as those owned by the industry. The fire hazards within the plant require the use of special spark arresting appliances if coal is used for fuel. Because of these hazards, and conditions attendant upon the spotting service, it is necessary to augment the normal switching crew by an additional member. Furthermore, if the Y. & M. V. should undertake to perform the spotting service it would be necessary for it to operate over some portion of the L. & A. tracks, and traffic arriving via the L. & A. destined to some portion of the plant reached by the Y. & M. V. would necessitate the use of the latter's tracks. Separate operations of the two carriers each handling its own traffic even though permitted to operate over each other's tracks would tend to cause congestion with consequent interference with industrial operations, and increase beyond economic reason the operating expenses of both carriers. Any operation not under plant management and control would be impracticable and would not be permitted by the industry. All of the above conditions exist at present as they did at the time the respondents refused to perform the spotting.

A witness for the industry testified that it would be satisfactory to the industry for the carriers to perform the spotting, "but
398 they would do it under our jurisdiction while they are in the refinery area," which means that the work could not be performed except at the industry's convenience. This witness admitted that should the carriers attempt to serve the industry without unified control an impossible situation would be created by reason of interference with plant operation. Further, respondents would be ob-

ligated to assume all liability for damage to the plant while their locomotives were operating therein, which is contrary to the usual provisions of carriers' side track agreements.

The contract by which the Y. & M. V. handles traffic from the east bank of the river for the N. O. T. & M. was entered into in 1907. Under its provisions this traffic is handled not to the final point of loading or unloading within the plant at North Baton Rouge, but to the interchange tracks of that industry. Therefore, the allowance paid by the N. O. T. & M. is paid for service which it could not perform either by means of a physical connection or through its agent under the contract.

After about three years of refusal to comply with the industry's demand the Y. & M. V., because of traffic pressure, consented to pay an allowance of $1.20 per loaded car. For competitive reasons the L. R. & N. did likewise. In 1931, the industry received payment of approximately $47,200 under this arrangement, which was about 60 percent of the amount received in 1929.

The manner in which the operations of this plant are conducted, and the hazards attendant upon them, in conjunction with the size of the industry and the complexity of the trackage layout, prevent the performance of any service by the connecting respondents beyond the present points of interchange unless conducted strictly for
399 the convenience of the industry and under its direction and control. No legal obligation rests upon respondents to perform switching or spotting service solely for the industry's convenience, and this in substance is admittedly what the industry here desires. See Merchants Shipbuilding Corp. v. Pennsylvania R. Co., 61 I. C. C. 214, 217; Car Spotting Charges, 34 I. C. C. 609, 617. In accordance with the principles announced in the original report in this proceeding, we find that the carriers have complied with their obligations under the interstate line-haul rates by the delivery and receipt of carload freight on the interchange tracks described of record; that the service beyond the interchange tracks is a plant service; and that by the payment of an allowance to the industr for service performed by it beyond the interchange tracks on interstate shipments, respondents provide the means by which the industry enjoys a preferential service not accorded to shippers generally, and refund or remit a portion of the rates or charges collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

An appropriate order will be entered.

MAHAFFIE, Commissioner, dissenting: For the reasons indicated in my separate expression in the original report herein, I am unable to agree with the finding that the practice condemned by the majority constitutes a violation of section 6 (7) of the act.

Commissioner Aitchison did not participate in the disposition of this case.

400 ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of May A. D. 1935.

STANDARD OIL COMPANY OF LOUISIANA, TERMINAL ALLOWANCE—EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

PART II—TERMINAL SERVICES

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by The Yazoo and Mississippi Valley Railroad Company, the Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company to the Standard Oil Company of Louisiana for performance by the latter of spotting service within its plant at North Baton Rouge, La., and the Commission having on the date hereof, made and filed a report containing its legal conclusions with respect to the general situation presented, and also having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Standard Oil Company of Louisiana, which reports are hereby referred to and made a part hereof, and the Commission having found in said supplemental report that by the payment of said allowance the above-named respondent carriers violate the Interstate Commerce Act as set forth in the above-mentioned reports:

401 It is ordered, That The Yazoo and Mississippi Valley Railroad Company, the Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company be, and they are hereby, notified and required to cease and desist on or before July 15, 1935, and thereafter to abstain from such unlawful practice.

By the Commission.

[SEAL] GEORGE B. MCGINTY,
Secretary.

402 In United States District Court

No. 314. Equity

[Title omitted.]

Order assigning case for hearing on application for preliminary injunction

Filed August 9, 1935

On consideration of the above entitled cause;

It is ordered that the application for a Preliminary Injunction, herein, be heard in the Court Room of the United States District Court at New Orleans, Louisiana, on Monday, the 19th day of August 1935, at 10:00 o'clock A. M., before a statutory Court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said Court to consist of Honorable Rufus E. Foster, Circuit Judge and Honorables T. M. Kennerly and Wayne G. Borah, District Judges, which is hereby convened and that the defendants be ordered then and there to show cause, if any they can, why the Preliminary Injunction prayed for should not issue.

(Signed) WAYNE G. BORAH,
District Judge.

NEW ORLEANS, LA., *August 9th, 1935.*

403 In United States District Court

No. 315 (Equity)

[Title omitted.]

Order assigning case for hearing on application for preliminary injunction

Filed August 9, 1935

On consideration of the above entitled cause;

It is ordered that the application for a preliminary injunction, herein, be heard in the Court Room of the United States District Court at New Orleans, Louisiana, on Monday, the 19th day of August 1935, at 10:00 o'clock A. M., before a statutory Court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said Court to consist of Honorable Rufus E. Foster, Circuit Judge and Honorables T. M. Kennerly and Wayne G. Borah, District Judges, which is hereby convened and that the defendants be ordered then and there to show cause, if any they can, why the Preliminary Injunction prayed for should not issue.

(Signed) WAYNE G. BORAH,
District Judge.

NEW ORLEANS, LOUISIANA, *August 9th, 1935.*

404 In United States District Court

No. 331 (Equity)

[Title omitted.]

Order fixing hearing on application for preliminary injunction

Filed July 10, 1935

On consideration of the above entitled cause;

It is ordered that the application for a Preliminary Injunction, herein, be heard in the Court Room of the United States District Court at New Orleans, Louisiana, on Friday, the 12th day of July, 1935, at 10:00 o'clock A. M., before a statutory Court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said court to consist of Honorable Rufus E. Foster, Circuit Judge, and Honorable John McDuffie and Wayne G. Borah, District Judges, which is hereby convened and that the defendants be ordered then and there to show cause, if any they can, why the Preliminary Injunction prayed for should not issue.

(Sgd.) WAYNE G. BORAH,
Judge.

NEW ORLEANS, LOUISIANA, *July 10, 1935.*

405 In United States District Court

No. 314. Equity

[Title omitted.]

Answer of United States of America

Filed September 7, 1935

United States, one of the above defendants, for answer to the Bill of Complaint filed herein against it, says:

I

United States admits that the facts alleged in paragraphs I, II, III, and IV of the Bill of Complaint are true, except that it denies the statement in said paragraph III that the movement of cars by plaintiff within its plant constitutes a transportation service within the meaning of the Interstate Commerce Act.

II

United States denies the allegations contained in paragraph V of the Bill, except that it admits that the defendant carrier files and publishes rates to and from points on its line, including plaintiff's

plant, but particularly denies that the movement of cars by plaintiff from point to point within its private grounds and plant constitutes a transportation service within the meaning of the Interstate Commerce Act, and denies that defendant carrier may perform such service without charge in addition to its line haul rates or may pay plaintiff for the performance of said service.

III

United States admits that the facts alleged in paragraphs VI, VII, VIII, and IX of the Bill are true, except that it denies the statement in said paragraph VII that the evidence submitted at
406 the hearing mentioned in that paragraph constitutes all the evidence heard and considered by the Commission with respect to the movement of cars within plaintiff's private plant and grounds.

IV

Answering paragraph X of the Bill, United States disclaims any knowledge as to whether, at the hearing in this case, plaintiff will tender a certified copy of the record before the Interstate Commerce Commission out of which its order of June 25, 1935, was issued, and therefore neither admits nor denies the allegations of that paragraph.

V

United States denies the allegations contained in paragraphs XI, XII, XIII, and XIV of the Bill, except that it admits that the 1905 annual report of said Commission to Congress contained the language quoted in said paragraph XIII and that the Interstate Commerce Act was amended in the particulars therein mentioned, but United States denies that said order of the Commission is unlawful or void for any of the reasons set forth in said paragraphs XI, XII, XIII, and XIV or for any other reason; and United States particularly denies the allegation in said paragraph XIV that plaintiff will suffer irreparable loss and injury if the Commission's said order is not enjoined and annulled, and further denies that plaintiff is without adequate remedy at law.

VI

Except as herein expressly admitted, United States denies each and every allegation of the Bill of Complaint and the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the Bill of Complaint, the United States prays that the relief therein prayed be denied, and that the Bill of Complaint be dismissed with costs to the plain-

tiff, and that it have the benefit of such other and further
407 orders, decrees, or relief as may be just and proper.

(Signed) ELMER B. COLLINS,
Special Asst. to the Attorney General.
(Signed) JOHN DICKINSON,
Assistant Attorney General.
(Signed) RENE A. VIOSCA,
United States Attorney.

[*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

408 In United States District Court

In Equity No. 315

[Title omitted.]

Answer of United States of America

Filed September 7, 1935

United States, one of the above defendants, for answer to the Bill of Complaint filed herein against it says:

I

United States admits that the facts alleged in paragraphs I, II, and III, of the Bill of Complaint are true except that it denies that the movement of cars by plaintiff within its private plant and grounds, mentioned in said paragraph III, constitutes a transportation service within the meaning of the Interstate Commerce Act.

II

United States denies the truth of the allegations contained in paragraphs IV, V, VI, and VII of the Bill, except that it admits that the defendant carriers have filed and published tariffs naming rates for transportation of property to and from points on their lines and admits further that plaintiff performs the switching and movement of cars from between interchange tracks and points of loading and unloading in its plant; and United States further admits that defendant carriers have published tariffs as alleged in said paragraph V purporting to compensate plaintiff for performance of said switching and movement of cars within its plant; but United States denies that said service constitutes a transportation service within the meaning of the Interstate Commerce Act, denies that defendant carriers may either perform said service without charge in ad-
409 dition to their line-haul rates, or pay plaintiff an allowance out of said rates for the performance of said service.

III

United States admits that the facts alleged in paragraphs VIII, IX, X, and XI of the Bill are true, except that it denies the implication in said paragraph IX that the evidence heard at the hearing therein mentioned constitutes all the evidence which the Interstate Commerce Commission heard and considered with respect to the practice of defendant carriers in paying allowances to plaintiff at its said plant.

IV

United States says that it has no knowledge of the allegation in paragraph XII that plaintiff will render, at the hearing in this case, a certified copy of the record before the Interstate Commerce Commission out of which its said order of July 11, 1935 was issued, and therefore neither admits nor denies said allegation.

V

United States denies the allegations contained in paragraphs XIII, XIV, XV, and XVI of the Bill, except that it admits that the 1905 report of the Commission of Congress contained the language quoted in said paragraph XV, and that the Interstate Commerce Act was amended in the particulars therein set forth; but United States denies that the Commission's said order of July 11, 1935, is unlawful for the reasons set forth in any of said paragraphs or for any other reason; and United States particularly denies the allegations in said paragraph XVI that plaintiff will suffer irreparable loss and injury if said order of the Commission is not enjoined and that plaintiff is without adequate remedy at law.

VI

Except as herein expressly admitted, United States denies each and every allegation of the Bill of Complaint and the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the Bill of Complaint, the United States prays that the relief therein prayed be denied and that the Bill of Complaint be dismissed with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Signed) JOHN DICKINSON,
Assistant Attorney General.
(Signed) RENE A. VIOSCA,
United States Attorney.

410 [*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

411 In United States District Court

In Equity No. 317

[Title omitted.]

Answer of United States of America

Filed September 7, 1935

United States, one of the above defendants, for answer to the Bill of Complaint filed against it says:

I

United States admits that the facts alleged in paragraphs I, II, III, IV, V, and VI are true except that it disclaims any knowledge of the statements contained in said paragraph IV concerning the location of other plants than those of the plaintiffs, and excepting further the suggestion in said paragraph VI that the evidence heard at the hearing therein mentioned constituted all of the evidence relating to the switching of cars within the plants of the plaintiffs and the practice of carriers in paying allowances therefor, which suggestion and assertion United States denies.

II

United States denies the matters, things and conclusions alleged in paragraphs VII, VIII, IX, and X of the Bill, except that it admits the statement in said paragraph IX that plaintiffs have performed the switching and movement of cars between points within their private plants and have received compensation therefor from the defendant carrier to the extent and under the circumstances stated and found by the Interstate Commerce Commission in its report annexed as Appendix B to the Bill and hereby referred to; and

United States further admits that the defendant carrier has
412 filed with the Interstate Commerce Commission the tariff described in said paragraph X; but United States denies that anything alleged in said paragraphs makes it lawful for defendant carrier to pay an allowance to plaintiffs for the movement of cars within their plants or to perform the movement of such cars without charge in addition to the line-haul rates.

III

United States denies the matters, things, and conclusions alleged in paragraphs XI, XII, and XIII of the Bill, except that it admits the allegation in said paragraph XI that an employee of plaintiff, Great Southern Lumber Company, and representatives of defendant carrier appeared and presented testimony at hearings conducted

pursuant to notice by the Interstate Commerce Commission, concerning the movement of cars within the plants of plaintiff and the payment by defendant carrier of an allowance therefor; and United States particularly denies the allegations in said paragraph XIII that plaintiffs will suffer irreparable loss and injury if said order of the Commission is not enjoined, and further denies that plaintiffs have no adequate remedy at law.

IV

Except as herein expressly admitted, United States denies each and every allegation of the Bill of Complaint and the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the Bill of Complaint, the United States prays that the relief therein prayed be denied and that the Bill of Complaint be dismissed with costs to the plaintiffs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.

John Dickinson,
(Signed) JOHN DICKINSON,
Assistant Attorney General.

Rene A. Viosca,
(Signed) RENE A. VIOSCA,
United States Attorney.

413 [*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

414 In United States District Court

In Equity No. 331

[Title omitted.]

Answer of United States of America

Filed August 1, 1935

United States, one of the above defendants, for answer to the bill of complaint filed herein against it says:

I

United States admits that the facts alleged in the opening section and in sections I, II, and III of the bill of complaint are true, with this exception: it denies all statements in said section III to the effect that the compensation or allowances paid by the defendant

railroads to the plaintiff are for service connected with the transportation of property or for the furnishing of instrumentalities used in such transportation, within the meaning of the Interstate Commerce Act.

II

Answering section IV of the bill, United States admits that the defendant railroad companies have duly published rates and charges for the transportation of property over their lines to and from plaintiff's plant at North Baton Rouge, La., and that said rates and charges contemplate the receipt and delivery at said plant of the property transported; admits that plaintiff m[illegible]es carload shipments of its property from interchange tracks at its plant whereon the defendant railroads have delivered said cars to plaintiff, to and from points within the confines of said private plant at which points plaintiff desires for its own convenience to unload or to load said cars; admits that the defendant railroads have filed tariffs
415 publishing and covering the payment by them of so-called terminal allowances to plaintiff in the amount of $1.20 per loaded car purporting to compensate plaintiff for alleged transportation services, and that such allowances have been paid to the plaintiff. But United States denies that said tariffs, or any of them, or the rates and charges therein published contemplate the placement, switching, and spotting of cars upon the spurs, tracks, and sidings within the confines of plaintiff's private industrial plant and grounds; denies that such placement, switching, and spotting of cars within said private plant of the plaintiff at points where it desires to load or unload said cars constitutes a transportation service within the meaning of the Interstate Commerce Act; denies that the defendant railroads may lawfully perform such services without extra charge therefor in addition to their line-haul rates, and denies that they may lawfully pay an allowance out of such line-haul rates to plaintiff for the performance of such intraplant switching and spotting of cars; denies that plaintiff performs any services or furnishes any facilities in connection with the transportation of carload traffic to and from its plant, within the meaning of the Interstate Commerce Act, and denies that the allowances are lawful under paragraph 13 of section 15 of the Interstate Commerce Act, or any other law. All allegations of said section IV not herein expressly admitted are hereby denied.

III

United States admits that the facts alleged in sections V, VI, VII, and VIII of the bill of complaint are true, except that it denies the assertion in said section VI that plaintiff performs services and furnishes facilities to and for the benefit of the railroad defendants and their connections in the transportation of carload freight.

IV

Answering section IX of the bill, United States admits that the said section correctly quotes in part, but in part only, the provisions of sections 1, 6, and 15 of the Interstate Commerce Act, and of section 1 of the Elkins Act of February 19, 1903, as amended;
416 but United States denies that said sections of said Acts, or the provisions of any other law, entitle plaintiff to allowances or compensation for the services performed by it and described in the bill, and further denies that said services constitute a transportation service within the meaning of the portions of the Interstate Commerce Act, quoted in section IX, or any other portions of said Act or any other applicable law.

V

Answering section X of the bill, United States disclaims any knowledge as to whether plaintiff will tender at the hearing in this cause a certified copy of the record before the Interstate Commerce Commission in the proceedings in which its order of May 14, 1935, was issued.

VI

United States denies the allegations of sections XI and XII of the bill, and denies that the Commission's order of May 14, 1935, is unlawful or void for the reasons therein set forth, or for any other reason.

VII

Answering section XIII, United States alleges that the allegations of said section constitute argument and conclusions of law, and plead no facts which are or may be relevant to the issue presented by the bill, and, therefore, require no answer, excepting the last two paragraphs of said section XIII, and the allegations of said paragraphs are hereby denied. And United States further denies that anything set forth in said section XIII entitles plaintiff to the allowances described in the bill.

VIII

United States denies the allegations of section XIV of the bill, except that it admits that plaintiff has performed the switching, placing and spotting of cars within its private grounds and plant, that the defendant railroad companies will be required to cease making and paying said allowance of $1.20 per car if the Commission's said order is not enjoined, but denies particularly that plaintiff will suffer irreparable loss and injury, or other legal damage,
417 if said order is not enjoined, and alleges that plaintiff has a full, complete, and adequate remedy either at law or by way

of restitution whereby it can, if the Commission's said order be eventually held unlawful, readily be made whole in any amount of which it may be deprived pending final determination of this suit.

IX

Except as herein expressly admitted, United States denies each and every allegation of the bill of complaint and the several sub-divisions thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees or relief as may be just and proper.

Elmer B. Collins.
(Sgd.) ELMER B. COLLINS,
Special Assistant to the Attorney General.
John Dickinson.
(Sgd.) JOHN DICKINSON,
Assistant Attorney General.
(Sgd.) RENE A. VIOSCA,
United States Attorney.

[*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

418 In United States District Court

In Equity No. 314

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, sec. 45a), I hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of myself, as its counsel, in the above-entitled suit.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

419 In United States District Court

In Equity No. 315

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, sec. 45a), I hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of myself, as its counsel, in the above-entitled suit.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

420 In United States District Court

In Equity No. 317

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, sec. 45a), I hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of myself, as its counsel, in the above-entitled suit.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

421 In United States District Court

In Equity No. 331

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, sup. VI, title 28, sec. 45a), we

hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

(Sgd) DANIEL W. KNOWLTON,
Chief Counsel.

422 In United States District Court

In Equity No. 314

[Title omitted.]

Answer of Interstate Commerce Commission

Filed August 19, 1935

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

423 II

Answering paragraphs III to XIV, inclusive, of the bill of complaint, the Commission admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph VI of the bill of complaint, and the Sixteenth Supplemental Report and order dated June 25, 1935, referred to in said paragraph VI, said order being mentioned also in paragraph III of the bill of complaint, copies of which are attached to and made parts of the bill of complaint as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether certain practices of what are referred to in said report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters cov-
424 ered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff's predecessor herein, by counsel for said parties; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of June 25, 1935, was not made or entered either arbitrarily or unjustly, or con-
425 trary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph XII of the bill of complaint, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, in making said order of July 25, 1935, the Commission either exceeded its authority or acted arbitrarily, as alleged in paragraph XIII of the bill of complaint.

The Commission specifically denies that, unless said order of June 25, 1935, is set aside, plaintiff will suffer irreparable loss and injury, as alleged in paragraph XIV of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and order, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON, *Chief Counsel.*

426 [*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

427 In United States District Court

In Equity No. 315

[Title omitted.]

Answer of Interstate Commerce Commission

Filed August 19, 1935

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to
428 answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XVI, inclusive, of the bill of complaint, the Commission admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph VIII of the bill of complaint, and the Twenty-third Supplemental Report dated July 11, 1935, referred to in said paragraph VIII, and the order dated July 11, 1935, referred to in paragraph III of the bill of complaint, copies of which, respectively, are attached to the bill of complaint as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenue or Expenses,

Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether said practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses of said carriers were in violation of the Interstate Commerce Act; and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including The Celotex Company, for the estate of
429 which the plaintiffs are acting in this suit as trustees, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of said Company, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiffs in this suit, whereupon the Commission determined said matters and entered and duly served upon said Company, and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own
430 knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of July 11, 1935, was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph XI of the bill of complaint, the Commission denies each of and all the allegations therein contained

The Commission specifically denies that, in making said order of July 11, 1935, it either acted arbitrarily or exceeded its authority, as alleged in paragraph XV of the bill of complaint.

The Commission specifically denies that, unless said order of July 11, 1935, is set aside, plaintiff will suffer irreparable loss and injury, as alleged in paragraph XVI of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill
431 of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said original report of May 14, 1935, and in said Twenty-third Supplemental Report and order of July 11, 1935, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON, *Chief Counsel.*

432 [*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

433 In United States District Court

In Equity No. 317

[Title omitted.]

Answer of Interstate Commerce Commission

Filed August 19, 1935

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

434 II

Answering paragraphs III to XIII, inclusive, of the bill of complaint, the Commission admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph V of the bill of complaint, and the Twenty-Seventh Supplemental Report and order dated July 12, 1935, referred to in said paragraph V, copies of which, respectively, are attached to the bill of complaint as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether certain practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectively refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiffs herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for con-
435 sideration, including testimony and other evidence submitted on behalf of plaintiffs herein, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiffs in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiffs herein, and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its

attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

436 The Commission further alleges that said order of July 12, 1935, was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph XII of the bill of complaint, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, unless the tariff referred to in paragraph XIII of the bill of complaint is permitted to become effective, or unless the carrier mentioned in that paragraph itself performs the placement service referred to in said paragraph with its own facilities and men, plaintiffs will suffer irreparable loss and injury.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said original report of May 14, 1935, and in said Twenty-Seventh Supplemental Report and order of July 12, 1935, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and

437 hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON, *Chief Counsel.*

[*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

438 In United States District Court

In Equity No. 331

[Title omitted.]

Answer of Interstate Commerce Commission

Filed July 27, 1935

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's

bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I to III, inclusive, of the bill of complaint, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs IV to XIV, inclusive, of the bill of complaint, the Commission admits and alleges that it made the order dated May 14, 1935, referred to in paragraph VI of the bill of complaint, and the report and fifth supplemental report of said date, referred to in paragraph V of the bill of complaint, copies of which are attached to and made parts of the bill of complaint
439 as Exhibit A and Exhibit B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether certain practices of what are referred to in said report as Class I Carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in and by said exhibits was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein, by the counsel of said parties; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them
440 was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of May 14, 1935, was not made or entered, either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further answering the first paragraph of paragraph numbered IV of the bill of complaint, the Commission denies the allegations therein contained.

Further answering paragraphs XI and XII of the bill of complaint, the Commission denies that the order of May 14, 1935, rereferred to in each of said paragraphs, is void for the reasons, or for any of the reasons, set forth in said paragraph XII, or for any other reason.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and order of May 14, 1935, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

(Sgd.) INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

441 [*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

442 In United States District Court

No. 314. Equity

[Title omitted.]

Answer of Illinois Central Railroad Company

Filed September 7, 1935

Illinois Central Railroad Company, one of the above defendants, for answer to the bill of complaint filed herein, insofar as the allegations contained therein apply to it, says:

I

Illinois Central Railroad Company denies that all or a majority of the capital stock of the defendant The Yazoo and Mississippi Valley Railroad Company is owned by it. Further answering the allegations in the bill of complaint insofar as said allegations apply to it, this defendant says that the lines of railroad operated by it do not reach the plaintiff's plant at Destrehan, Louisiana; that only 2.6 per cent of the capital stock of the defendant The Yazoo and Mississippi Valley Railroad Company is owned by this defendant and that the majority of the capital stock of the said defendant The Yazoo and Mississippi Valley Railroad Company is owned by the Mississippi Valley Company, a separate corporation, the capital stock of which is owned by this defendant, but that the said the Yazoo and Mississippi Valley Railroad Company is a corporation distinct and separate from this defendant and its properties are separately operated; that the allowance made the plaintiff by The Yazoo and Mississippi Valley Railroad Company alleged in the complaint was and is published in a joint tariff of the Illinois Central Railroad Company and The Yazoo and Mississippi Valley Railroad Company duly on file with the Interstate Commerce Commission but that said allowance was and is made solely by the defendant the Yazoo & Mississippi Valley Railroad Company, and was and is not made by or on behalf of this defendant.

443 II

Further answering the allegations in the bill of complaint filed herein, insofar as they pertain to this defendant, this defendant says that the investigation by the Interstate Commerce Commission alleged in the complaint with respect to the allowances made to the plaintiff for services performed by it at its plant at Destrehan, La., was solely with respect to the allowances made by the defendant The Yazoo and Mississippi Valley Railroad Company which serves said plant; that no investigation has been conducted by the Interstate

Commerce Commission with respect to any allowance made by this defendant to the plaintiff for services rendered by it at its said plant at Destrehan, Louisiana, and that the said order of the Interstate Commerce Commission of June 25, 1935, sought to be enjoined herein, does not run against this defendant.

Wherefore having fully answered the Bill of Complaint the Illinois Central Railroad Company prays that the relief therein prayed against it be denied and that the bill of complaint be dismissed as to it with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

(Signed) ILLINOIS CENTRAL RAILROAD CO.,
By E. C. CRAIG,
C. N. BURCH,
E. A. SMITH,
J. T. QUISENBERRY,
LEMLE, MORENO & LEMLE,
Solicitors for defendant, Illinois Central Railroad Company.

444 In United States District Court

No. 314. Equity

[Title omitted.]

Answer of Yazoo & Mississippi Valley Railroad Company

Filed September 7, 1935

The Yazoo and Mississippi Valley Railroad Company, one of the above defendants, for answer to so much of the bill of complaint filed herein as pertains to it and is material, says:

I

The Yazoo and Mississippi Valley Railroad Company admits the facts alleged in the opening section and in sections I, II, III, and IV of the bill of complaint are true with this exception: It denies that all or a majority of its capital stock is owned by the Illinois Central Railroad Company, and further answering said allegation says that only 2.6 percent of its capital stock is owned by the Illinois Central Railroad Company and that the majority of its capital stock is owned by the Mississippi Valley Company, a corporation, whose capital stock is owned by the Illinois Central Railroad Company.

II

Answering section V of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company admits that it has duly published rates and charges for the transportation of property over its

line in interstate commerce to and from the plaintiff's plant at Destrehan, Louisiana, and that said rates and charges contemplate the receipt and delivery at said plant of the property so transported; admits that the plaintiff moves cars loaded with shipments of its property and empty cars used in connection therewith to and from interchange tracks at its plant whereon this defendant has placed said cars from and to points within the confines of said plants
445 where said cars are loaded or unloaded; admits that the plaintiff demanded that this defendant perform the service of transferring empty and loaded cars received and delivered by it between said interchange tracks and said points of loading and unloading at plaintiff's said plant; admits that in lieu of performing said service this defendant elected to have the plaintiff perform said transfer service at its plant for which this defendant duly published and provided an allowance to the plaintiff of 90 cents per loaded car in its tariff duly filed with the Interstate Commerce Commission, and thereafter has made and is making said allowance, as alleged in the bill of complaint. Answering the allegations in said section V of the bill of complaint with respect to the obligations of this defendant under the law regarding the performance of the services between the said interchange tracks and the said points of loading and unloading and the lawfulness of the allowance made by this defendant for the performance of said services by the plaintiff, this defendant says that said allegations constitute arguments and conclusions of law as to which no answer is required.

III

The Yazoo and Mississippi Valley Railroad Company admits the facts alleged in sections VI, VII, and VIII of the bill of complaint are true. Further answering the allegations in section VIII of the Bill of Complaint, The Yazoo and Mississippi Valley Railroad Company says that by tariff duly filed with the Interstate Commerce Commission effective August 22, 1935, pursuant to the interlocutory injunction of August 19, 1935, entered herein, this defendant cancelled its tariff, Third Revised Page 171 B of Tariff No. 2–B, I. C. C. No. 6700, effective August 22, 1935, cancelling and withdrawing said allowance to the plaintiff at its plant at Destrehan, Louisiana, which it had filed with the Interstate Commerce Commission in compliance with the Commission's order of June 25, 1935, sought to be permanently enjoined herein, and has continued and is continuing said allowance.

446 IV

Answering section IX of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company says that the allegations therein contained are matters of law to which no answer is required.

V

Answering section X of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company disclaims any knowledge as to whether the plaintiff will tender at the hearing in this case a certified copy of the record before the Interstate Commerce Commission in the proceedings in which its order of June 25, 1935, was issued.

VI

Answering Section XI of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company says that it has cancelled its tariff cancelling the allowance made by it to the plaintiff at its plant at Destrehan, Louisiana, thereby continuing the terminal allowance made by it and in effect on June 24, 1935, pursuant to the interlocutory injunction entered herein on August 19, 1935, as aforesaid.

VII

Answering sections XII and XIII of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company says that the allegations therein contained insofar as material and relevant, constitute arguments and conclusions of law and therefore, require no answer.

VIII

Answering section XIV of the bill of complaint The Yazoo and Mississippi Valley Railroad Company disclaims any knowledge as to the damages the plaintiff would suffer in the aggregate if the order of the Interstate Commerce Commission sought to be enjoined herein, is not enjoined and set aside, and as to whether said damages would be irreparable. Further answering the allegations in said Section XIV of the bill of complaint, and the prayer for relief therein contained, The Yazoo and Mississippi Valley Railroad
447 Company, says that under the law it has the option of either performing all terminal transportation service in connection with interstate traffic covered by the rates duly published and filed by it with the Interstate Commerce Commission or of permitting the shipper or receiver to perform said service and making a proper allowance therefor, and that, having restored the status quo pending the final disposition of this case by cancelling and withdrawing its tariff filed with the Interstate Commerce Commission in compliance with the said order of June 25, 1935, sought to be enjoined herein, thereby restoring and continuing the allowance to the plaintiff at its plant at Destrehan, Louisiana, until this case is finally disposed of, no permanent order requiring this defendant to continue said allowance in lieu of performing the service covered by it, or otherwise restricting or interfering with its option under the law should be entered herein.

Wherefore, having fully answered the bill of complaint The Yazoo and Mississippi Valley Railroad Company prays that the permanent relief against it therein prayed be denied and that the bill of complaint be dismissed as to it with costs to the plaintiff and that it have the benefit of such other and further orders decrees or relief as may be just and proper.

(Signed) THE YAZOO AND MISSISSIPPI VALLEY RAILROAD CO.,
By E. C. CRAIG,
C. N. BURCH,
E. A. SMITH,
J. T. QUISENBERRY,
LEMLE, MORENO & LEMLE,
Solicitors for defendant The Yazoo & Mississippi Valley Railroad Company.

448 In United States District Court

In Equity No. 315

[Title omitted.]

Stipulation of counsel extending time to answer

Filed September 11, 1935

In the above entitled and numbered cause it is stipulated by and between plaintiffs and defendant Railroad Companies (and Trustees, where Trustees are defendants) that the time within which said Railroad defendants (or Trustees, if any) may plead or answer shall be and is hereby extended for a period of thirty days, but not to extend in any event thirty days beyond this 27th day of August, 1935.

(Signed) JOHN S. BURCHMORE,
Solicitors for Plaintiffs.
(Signed) SPENCER, GIDIERE, PHELPS & DUNBAR
(T. & P. Ry. Co.),
(Signed) J. H. TALLICHET
(T. & N. O. R. R. Co.),
(Signed) DENEGRE, LEOVY & CHAFFE
(T. P.-M. P. R. R. Co.),
(Signed) DUFOUR, ST. PAUL LEVY & MICELI
(T. P.-M. P. T. R. R. N. O.),
Solicitors for Defendants.

449 In United States District Court

No. 315. In Equity

[Title omitted.]

Answer of Texas and New Orleans Railroad Company to original bill of complaint

Filed September 26, 1935

Comes now Texas and New Orleans Railroad Company, one of the defendants herein, and for answer to plaintiffs' original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of the said Bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiffs' plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Section XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances
450 made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant, and as equity may require.

(Signed) DENEGRE, LEOVY & CHAFFE,
(Signed) J. H. TALLICHET,
Solicitors for the Texas and New Orleans Railroad Company, Defendant.

451 In United States District Court

No. 315. In Equity

[Title omitted.]

Answer of the Texas and Pacific Railway Company to original bill of complaint

Filed October 15, 1935

Comes now the Texas and Pacific Railway Company, one of the defendants herein, and for answer to plaintiffs' original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiffs' plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party and that it should not be required to admit or deny said allegations. If required to answer, it alleges the facts to be that the allowances
452 made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there

was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, Part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant, and as equity may require.

(Signed) SPENCER, GIDIERE, PHELPS & DUNBAR,
Solicitors for the Texas and Pacific Railway Company, Defendant.

453 In United States District Court

No. 315. Equity

[Title omitted.]

Answer of Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans to plaintiff's original bill of complaint

Filed October 22, 1935

Comes now the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, one of the defendants herein, and for answer to plaintiff's original bill of complaint, represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiffs' plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, the United
454 States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform

the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant, and as equity may require.

(Signed) WILLIAM C. DUFOUR,
(Signed) JOHN ST. PAUL,
(Signed) LEONARD B. LEVY,
(Signed) EDWIN F. MARX,
Solicitors for the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, Defendant.

455 In United States District Court

In Equity No. 317

[Title omitted.]

Answer of Gulf, Mobile & Northern Railroad Company

Filed November 6, 1935

Now comes Gulf, Mobile and Northern Railroad Company, one of the defendants herein, and for its separate answer to the Bill of Complaint filed herein, says:

I

It admits the allegations contained in Sections I, II, III, and IV of said Bill of Complaint.

II

This defendant admits, as to the allegations in Section V of said Bill of Complaint, that the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as "Ex Parte 104, Part II", and admits that the Interstate Commerce Commission pursued said inquiry as alleged by said Bill of Complaint, and admits that after the conclusion of the inquiry, a proposed report was prepared by W. P. Bartel, Director of the Bureau of Service, Interstate Commerce Commission, and that a copy of said report was served on this defendant; and this defendant further admits that it filed exceptions to said proposed report insofar as it related to this defendant. And this defendant admits the issuance by the Interstate Commerce Commission of its "Twenty-seventh Supplemental Report" dated July 12, 1935, in which the Commission required this defendant to cease
456 and desist making payments to the plaintiffs herein for switch-

ing, as more fully set forth in a copy of said Supplemental Report attached to said Bill of Complaint, as a part thereof.

III

This defendant admits that evidence, oral and documentary, relating to the service performed and the facilities furnished by plaintiffs to and for the benefit of this defendant and its connections in the transportation of carload freight at, to and from Bogalusa, Louisiana, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service, Interstate Commerce Commission, sitting as an Examiner, at New Orleans, La., May 10, 1932, and it has no knowledge of any other evidence having been taken in said proceeding relating to said service and facilities, and has had no notice of any other such evidence.

IV.

This defendant admits the allegations of Section VII of said Bill of Complaint relating to the custom and practice of common carrier railroads in the State of Louisiana and adjacent States, and in other States throughout the United States, including this defendant, of stating in their tariffs, the city, town, or other station locality to and from which carriers undertake to transport freight at the rates and charges in such tariffs set forth, without stating the precise spots in such city, town, or station locality; and admits that it is the uniform custom and practice of common carrier railroad companies, including this defendant and its connections, to include within the carload freight rates established and maintained for the transportation of cars and freight, the complete transportation service described in Paragraph 2 of said Section VII of said Bill of Complaint. And this defendant further admits that it is customary for railroad, including this defendant, sometimes to employ other railroad companies to perform for them their undertaking to spot or place cars, and to pay such other railroads for such service, and admits that it is customary for railroads sometimes to employ a shipper or receiver of the freight, or other agent or agency, to complete such undertaking, and to compensate such shipper, receiver, and other agent or agency for such services, and this defendant admits that it follows, and that its predecessor, New Orleans
457 Great Northern Railroad Company, followed, generally, such custom in serving shippers and receivers of freight on their lines of railroad; and this defendant further admits that, pursuant to such custom, it and its said predecessor have always provided in their tariffs that for the compensation afforded by its established rates for transportation between designated cities, towns, or other station localities, it would deliver and receive carload freight by the placing of the cars at any reasonable and convenient point for the loading or unloading thereof on the tracks serving the plants of

the plaintiffs herein, and each of them, at Bogalusa, La., the same as at all plants, industries, sawmills, and business establishments adjacent to its railroad, and served by so-called private or industrial tracks, as well as on so-called public team tracks.

And this defendant further admits that its duly filed and published tariffs, and the tariffs of other railroad carriers in the State of Louisiana, and in other States of the United States, in effect now and for some years past, have named rates for transportation covering the complete service described in Section VII of said Bill of Complaint with respect to carload freight moving to and from any and all railroad terminals, industries, plants, sawmills, warehouses, and other business establishments, and that the same rates have been applicable and have been applied by all common carriers by railroad, whether carload shipments of freight originated on so-called public team tracks or on so-called private side tracks.

V

As to the allegations of Section VIII of said Bill of Complaint, this defendant says that it has no knowledge or belief as to all of the testimony adduced or presented in the Interstate Commerce Commission's inquiry designated as "Ex Parte 104, Part II," and has no knowledge or belief as to whether there is no evidence contrary to or not supporting the averments in Section VII of said Bill of Complaint, but avers that so far as this defendant is concerned, it did not present any evidence whatsoever in said inquiry to the effect that in serving any industry, plant, sawmill, warehouse or other business establishment, including the complainants, it has ever sought to limit its duty or terminate its obligation under the line haul freight
458 rates by placement of cars at any point intermediate to the place mutually agreed upon with its patrons as reasonable and convenient for the loading or unloading of carload freight.

VI

The defendant admits the allegations of Section IX of said Bill of Complaint insofar as they relate to its agreement with the plaintiffs, and its practi'es in moving empty cars and cars containing freight between its main line at Bogalusa, La., and convenient points of loading or unloading in the plants of the plaintiffs, and adjacent plants, and this defendant admits that it made the payments to the plaintiffs described in said Section IX in the manner and for the purposes therein stated; but this defendant has no knowledge or belief as to whether the plaintiff, Great Southern Lumber Company, was advised that the arrangement described or payments made to it by virtue of said arrangement be provided for in tariffs on file with the Interstate Commerce Commission. This defendant further admits as to the allegations of said Section IX that the sums received by said plaintiff and paid by this defendant under said arrange-

ment and agreement, have been less than the actual cost to said plaintiff of furnishing facilities and paying men for the account of this defendant, and admits that the amounts so paid by this defendant have been less than it would have cost this defendant to furnish the facilities and do the work covered by said payments, and admits that this is established by evidence adduced before the Interstate Commerce Commission in its said proceeding, Ex Parte 104, Part II, but this defendant has no knowledge as to whether there is any evidence of record in said proceeding to the contrary.

VI

This defendant admits that it has filed with the Interstate Commerce Commission, the tariff schedule described in Section X of said Bill of Complaint, and alleges that since the date of the filing of said tariff, it has become effective, and that it is in conformity with so much of the Interstate Commerce Commission's aforesaid Twenty-seventh Supplemental Report as holds that Paragraph I of Section VI of the Interstate Commerce Act requires that every common carrier subject to the provisions of that Act publish its established
459 rates, fares, and charges for transportation, and likewise state all privileges or facilities granted or allowed, and any rules and regulations which in any way shall affect or determine any part of the aggregate of such rates, fares or charges, or the value of the service rendered to the passenger, shipper, or consignee.

VII

As to the allegations in Section XI of said Bill of Complaint, this defendant admits that, so far as it is concerned, the order of the Interstate Commerce Commission instituting its investigation in Ex Parte 104, Part II, was made on its own motion, and without formal complaint as to any of the practices of this defendant, and it admits further the allegations contained in said Section XI relative to that portion of said investigation that took place at New Orleans, La., May 9–12, 1932.

VIII

This defendant admits the matters, things, and conclusions alleged in Sections XII and XIII, of said Bill of Complaint.

Wherefore, Gulf, Mobile and Northern Railroad Company fully answered the Bill of Complaint herein, prays that it may have the benefit of such orders, decrees, or relief as may be just and proper in the premises.

GULF, MOBILE AND NORTHERN RAILROAD COMPANY,
By (Signed) D. S. WRIGHT, *Its General Attorney.*

D. S. Wright, General Attorney, G. M. & N. R. R. Co., 71 Conti St., Mobile, Ala.

460 In United States District Court

In Equity. No. 331

[Title omitted.]

Answer of Illinois Central Railroad Company

Filed August 7, 1935

Illinois Central Railroad Company, one of the above defendants, for answer to the bill of complaint filed herein, insofar as the allegations contained therein apply to it, says:

I

Illinois Central Railroad Company denies that all or a majority of the capital stock of the defendant The Yazoo and Mississippi Valley operating agreement, or otherwise delivers or receives freight at plaintiff's plant at North Baton Rouge, Louisiana, in interstate commerce or otherwise; denies that any services are performed for or on its behalf by plaintiff at its said plant with respect to the receipt or delivery of freight, and denies that any allowance for services in connection with the receipt or delivery of freight performed by plaintiff at its said plant at North Baton Rouge, Louisiana, has been or is being made by this defendant. Further answering the allegations in the bill of complaint insofar as said allegations apply to it, this defendant says that the lines of railroad operated by it do not reach the city of North Baton Rouge, Louisiana, or the plaintiff's plant; that only 2.6 per cent of the capital stock of the defendant The Yazoo and Mississippi Valley Railroad Company is owned by this defendant and that the majority of the capital stock of the said defendant The Yazoo and Mississippi Valley Railroad Company is owned by the Mississippi Valley Company, a separate corporation,
461 the capital stock of which is owned by this defendant, but that the said The Yazoo and Mississippi Valley Railroad Company is a corporation distinct and separate from this defendant and its properties are separately operated; that the allowance made the plaintiff by The Yazoo and Mississippi Valley Railroad Company alleged in the complaint was and is published and provided in a joint tariff of the Illinois Central Railroad Company and The Yazoo and Mississippi Valley Railroad Company duly on file with the Interstate Commerce Commission but that said allowance was and is made soley by the defendant, The Yazoo and Mississippi Valley Railroad Company and was and is not made by or on behalf of this defendant.

II

Further answering the allegations in the bill of complaint filed herein, insofar as they pertain to this defendant, this defendant says that the investigation by the Interstate Commerce Commission alleged in the complaint with respect to allowances to the plaintiff for services performed by it at its plant at North Baton Rouge, La., was solely with respect to allowances made by the railroad defendants herein which serve said plant, either with their own rails or by means of operating agreements; that no investigation has been conducted by the Interstate Commerce Commission with respect to any allowance made by this defendant to the plaintiff for services rendered by it at its said plant at North Baton Rouge, Louisiana, and that the said order of the Interstate Commerce Commission of May 14, 1935, sought to be enjoined herein, does not run against this defendant.

Wherefore, having fully answered the bill of complaint, Illinois Central Railroad Company prays that the relief therein prayed against it be denied and that the bill of complaint be dismissed as to it with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

(Sgd.) ILLINOIS CENTRAL RAILROAD COMPANY,
By E. C. CRAIG,
E. A. SMITH,
J. T. QUISENBERRY,
LEMLE, MORENO & LEMLE,
Solicitors for defendant Illinois Central Railroad Company.

462 In United States District Court

No. 331. Equity

[Title omitted.]

Answer of Yazoo and Mississippi Valley Railroad Company

Filed August 7, 1935

The Yazoo and Mississippi Valley Railroad Company, one of the above defendants, for answer to so much of the bill of complaint filed herein as pertains to it and is material, says:

I

The Yazoo and Mississippi Valley Railroad Company admits the facts alleged in the opening section and in sections I, II, and III of the bill of complaint are true with this exception: It denies that

all or a majority of its capital stock is owned by the Illinois Central Railroad Company, and further answering said allegation, says that only 2.6% of the capital stock of The Yazoo and Mississippi Valley Railroad Company is owned by the Illinois Central Railroad Company and that the majority of its capital stock is owned by the Mississippi Valley Company, a corporation, whose capital stock is owned by the Illinois Central Railroad Company.

II

Answering section IV of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company admits that it has duly published rates and charges for the transportation of property over its line in interstate commerce to and from the plaintiff's plant at North Baton Rouge, Louisiana, and that said rates and charges contemplate the receipt and delivery at said plant of the property so transported; admits that the plaintiff moves cars loaded with ship-
463 ments of its property and empty cars used in connection therewith to and from interchange tracks at its plant whereon this defendant has placed said cars from and to points within the confines of said plant where said cars are loaded or unloaded; admits that the plaintiff demanded that this defendant perform the service of transferring empty and loaded cars received and delivered by it between said interchange tracks and said points of loading and unloading at plaintiff's said plant; admits that in lieu of performing said service this defendant elected to have the plaintiff perform said transfer service at its plant for which this defendant duly published and provided an allowance to the plaintiff of $1.20 per loaded car in its tariff duly filed with the Interstate Commerce Commission, and thereafter has made and is making said allowance, as alleged in the bill of complaint. Answering the allegations in said section IV of the bill of complaint with respect to the obligations of this defendant under the law regarding the performance of the services between the said interchange tracks and the said points of loading and unloading and the lawfulness of the allowance made by this defendant for the performance of said services by the plaintiff, this defendant says that said allegations constitute arguments and conclusions of law as to which no answer is required.

III

The Yazoo and Mississippi Valley Railroad Company admits the facts alleged in sections V, VI, VII, and VIII of the bill of complaint are true. Further answering the allegations in section VIII of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company says that by tariff duly filed with the Interstate Commerce Commission, effective July 15, 1935, pursuant to the interlocutory injunction of July 13, 1935, entered herein, this defendant cancelled its tariff No. 2-B, I. C. C. No. 6700, effective July 15, 1935, cancelling and withdrawing said allowance to the plaintiff at its plant at North

Baton Rouge, Louisiana, which it had filed with the Interstate Commerce Commission in compliance with the Commission's order of May 14, 1935, sought to be permanently enjoined herein, and has continued and is continuing said allowance.

464 IV

Answering section IX of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company says that the allegations therein contained are matters of law to which no answer is required.

V

Answering section X of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company disclaims any knowledge as to whether the plaintiff will tender at the hearing in this case a certified copy of the record before the Interstate Commerce Commission in the proceedings in which its order of May 14, 1935, was issued.

VI

Answering section XI of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company says that it has cancelled its tariff cancelling the allowance made by it to the plaintiff at its plant at North Baton Rouge, Louisiana, thereby continuing the terminal allowance made by it and in effect on May 13, 1935, pursuant to the interlocutory injunction entered herein on July 13, 1935, as aforesaid.

VII

Answering sections XII and XIII of the bill of complaint, The Yazoo and Mississippi Valley Railroad Company says that the allegations therein contained, insofar as material and relevant, constitute arguments and conclusions of law and, therefore, require no answer.

VIII

Answering section XIV of the bill of complaint, The Yazoo and Mississippi Railroad Company disclaims any knowledge as to the damages the plaintiff would suffer in the aggregate if the order of the Interstate Commerce Commission, sought to be enjoined herein, is not enjoined and set aside, and as to whether said damages would be irreparable. Further answering the allegations in said section XIV of the bill of complaint, and the prayer for relief therein
465 contained, The Yazoo and Mississippi Valley Railroad Company, says that under the law it has the option of either performing all terminal transportation service in connection with interstate traffic covered by the rates duly published and filed by it with the Interstate Commerce Commission, or of permitting the shipper

or receiver to perform said service and making a proper allowance therefor, and that, having restored the status quo pending the final disposition of this case by cancelling and withdrawing its tariff filed with the Interstate Commerce Commission in compliance with the said order of May 14, 1935, sought to be enjoined herein, thereby restoring and continuing the allowance to the plaintiff at its plant at North Baton Rouge, Louisiana, until this case is finally disposed of, no permanent order requiring this defendant to continue said allowance in lieu of performing the service covered by it, or otherwise restricting or interfering with its option under the law, should be entered herein.

Wherefore, having fully answered the bill of complaint, The Yazoo and Mississippi Valley Railroad Company prays that the permanent relief against it therein prayed be denied and that the bill of complaint be dismissed as to it with costs to the plaintiff and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

(Sgd.) THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY,
By E. C. CRAIG,
E. A. SMITH,
J. T. QUISENBERRY,
LEMLE, MORENO & LEMLE,
Solicitors for defendant, The Yazoo and Mississippi Valley Railroad Company.

466 In United States District Court

In Equity No. 331

[Title omitted.]

Interlocutory injunction

Filed July 12, 1935

This cause coming on to be heard upon motion of Plaintiff, by its solicitors, for a preliminary or interlocutory injunction, upon due notice and full hearing upon such application in accordance with such notice having been had and the Court being fully advised; it is

Thereupon ordered, adjudged, and decreed:

I

That the enforcement, operation, and execution of said order of the Interstate Commerce Commission of May 14, 1935, be and it is hereby restrained and suspended until final determination of this cause.

II

That the Illinois Central Railroad Company, The Yazoo & Mississippi Valley Railroad Company, the Louisiana & Arkansas Rail-

way Company, and the New Orleans, Texas & Mexico Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees) be and each of them are required to cancel their respective tariffs as set forth in paragraph VIII of the Bill of Complaint, to the extent that the same are in conformity with the said order of the
467 Interstate Commerce Commission, and to restore the terminal allowance, as provided in their respective tariffs, as set forth in paragraph IV of the Bill of Complaint.

III

That the defendants be and they are hereby restrained from any act, direct or indirect, in the enforcement, operation, and execution of the said order of the Interstate Commerce Commission until final determination of this cause.

IV

Plaintiff shall immediately execute and file a bond in the sum of SIX THOUSAND ($6,000.00) Dollars, to be approved by this Court conditioned that plaintiff will pay to the defendants such sum as this Court may determine is proper if this interlocutory injunction is dissolved.

(Sgd.) RUFUS E. FOSTER,
Circuit Court Judge.
(Sgd.) WAYNE G. BORAH,
(Sgd.) JOHN MCDUFFIE,
District Judges.

NEW ORLEANS, LA., *July 12, 1935.*

468 In United States District Court

No. 314. Equity

[Title omitted.]

Interlocutory injunction

Filed August 19, 1935

The plaintiff having heretofore filed its Bill of Complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation, and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 25th day of June, 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 22nd day of August 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for

such interlocutory injunction pending the final order of the court herein;

And the Honorable Wayne G. Borah, Judge of the District Court of the United States for the Eastern District of Louisiana, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determine said application for said interlocutory injunction, two other judges, namely, Honorable Rufus E. Foster, United States Circuit Judge and Honorable T. M. Kennerly, United States District Judge.

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Monday, the 19th day of August 1935, was given to the above named respondents, to the Attorney General of the United States, and to the Interstate Commerce Commission.

469 It further appearing from the Bill of Complaint that defendants, The Yazoo and Mississippi Valley Railroad Company and Illinois Central Railroad Company have filed certain tariff schedules, to become effective August 22nd, 1935, in compliance with the aforesaid order of the Commission, whereby each of said defendants will cancel the allowance which has been paid plaintiff for many years last past as compensation for transportation services under paragraph (13) of Section 15 of the Interstate Commerce Act; and it appearing that the plaintiff in order to send and receive its shipments will be compelled to perform said transportation services without compensation after said tariffs are allowed to become effective on said date, to the irreparable damage of said petitioner; and that the effective date of such tariffs should be suspended pending the outcome of the matters in controversy in this proceeding;

And the Court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises, and upon hearing;

Now, therefore, it is ordered that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 25th day of June 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to petitioner, Pan American Petroleum Corporation, and the said report and order are suspended, stayed, and set aside, pending the further order of the Court.

It is further ordered that the operation of the aforesaid tariff schedules filed by defendants, The Yazoo and Mississippi Valley Railroad Company, and Illinois Central Railroad Company, to become effective August 22, 1935, cancelling the aforesaid allowances to plaintiff, be, and each of them is, hereby suspended and set aside, pending the further order of this Court.

470 Plaintiff shall immediately execute and file bond in the sum of Five Thousand Dollars ($5,000.00) to be approved by

one of the Judges of this Court, conditioned that plaintiff will pay to the defendants such sum as this Court may determine is proper if this interlocutory injunction is dissolved and held for naught.

By the court.

(Signed) RUFUS E. FOSTER,
Circuit Judge.
(Signed) WAYNE G. BORAH,
District Judge.
(Signed) T. M. KENNERLY,
District Judge.

AUGUST 19, 1935.

471 In United States District Court

In Equity No. 315

[Title omitted.]

Interlocutory injunction

Filed August 19, 1935

The plaintiff having heretofore filed its Bill of Complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation, and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 11th day of July 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 3rd day of September 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the court herein;

And the honorable Wayne G. Borah, Judge of the District Court of the United States for the Eastern District of Louisiana, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determine said application for said interlocutory injunction, two other judges, namely, Honorable Rufus E. Foster, United States Circuit Judge and Honorable T. M. Kennerly, United States District Judge;

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Monday, the 19th day of August 1935, was given to the above named respondents, to the Attorney General of the United States and to the Interstate Commerce Commission;

472 It further appearing from the Bill of Complaint that defendants, Texas and New Orleans Railroad Company, the Texas and Pacific Railway Company, Missouri Pacific Railroad

Company, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, have filed certain tariff schedules, to become effective September 3, 1935, in compliance with the aforesaid order of the Commission, whereby each of said defendants will cancel the allowance which has been paid plaintiff for many years last past as compensation for transportation services under paragraph (13) of Section 15 of the Interstate Commerce Act; and it appearing that the plaintiff in order to send and receive its shipments will be compelled to perform said transportation services without compensation after said tariffs are allowed to become effective on said date, to the irreparable damage of said petitioner; and that the effective date of such tariffs should be suspended pending the outcome of the matters in controversy in this proceeding;

And the court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises and upon hearing;

Now, therefore, it is ordered that during the pendency of this matter the United States of America and the Interstate Commerce Commission be, and they are hereby, restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 11th day of July 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to petitioner, the Celotex Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the Court.

It is further ordered that the operation of the aforesaid tariff scheduled filed by defendants, Texas and New Orleans Railroad Company, the Texas and Pacific Railway Company, Missouri Pacific Railroad Company, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, to become effective September 3, 1935, cancelling the aforesaid allowances to plaintiff be, and each of them is, hereby suspended and set aside, pending the further order of this Court.

Plaintiff shall immediately execute and file a bond in the sum of five thousand ($5,000.00) Dollars, to be approved by one of the judges of this Court, conditioned that plaintiff will pay to the
473 defendants such sum as this Court may determine in proper if this interlocutory injunction is dissolved.

By the Court.

Signed) RUFUS E. FOSTER,
Circuit Judge.

Signed) WAYNE G. BORAH,
District Judge.

Signed) T. M. KENNERLY,
District Judge.

AUGUST 19, 1935.

474 In United States District Court

In Equity No. 317

[Title omitted.]

Interlocutory injunction

Filed August 19, 1935

The plaintiffs having heretofore filed their bill of complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation, and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 12th day of July 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 3rd day of September 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiffs for such interlocutory injunction pending the final order of the court herein;

And the Honorable Wayne G. Borah, Judge of the District Court of the United States for the Eastern District of Louisiana, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determine said application for said interlocutory injunction, two other judges, namely, Honorable Rufus E. Foster, United States Circuit Judge and Honorable T. M. Kennerley, United States District Judge.

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Monday, the 19th day of August 1935, was given to the above named respondents, to the Attorney General of the United States and to the Interstate Commerce Commission;

475 It further appearing from the Bill of Complaint that defendant Gulf, Mobile and Northern Railroad Company, has filed a certain tariff schedule to become effective August 29, 1935, in conformity with the privisions of paragraph (13) of Section 15 and of paragraph (1) of Section 6 of the Interstate Commerce Act, providing for the payment of a certain terminal allowance to plaintiffs herein; and it appearing that the plaintiffs, and each of them, in order to send and receive their aforesaid shipments, will be compelled to perform such transportation services, without compensation if said order of the Commission remains in effect and if said tariff schedule is not allowed to become effective on said 29th day of August 1935, to the irreparable damage of plaintiffs, and each of them; and that the aforesaid tariff should be permitted to take effect and to be applied as between the parties thereto, notwithstanding the terms of the Commission's aforesaid order;

And the court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises, and upon hearing;

Now, therefore, it is ordered that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 12th day of July 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to petitioners, Great Southern Lumber Company and Bogalusa Paper Company, Incorporated, and the said report and order are suspended, strayed, and set aside, pending the further order of the court.

It is further ordered that the defendants be, and they are, hereby restricted from any act in the enforcement, application or execution of the said order of the Commission until final determination of this cause, or any interference with the taking effect of the aforesaid schedule of the defendant, Gulf, Mobile and Northern Railroad Company, to become effective August 29, 1935, and the said defendant is directed to apply the terms of its said tariff, notwithstanding any supposed requirements of the aforesaid order of the Interstate Commerce Commission.

476 Plaintiffs shall immediately execute and file a bond in the sum of Five Thousand ($5,000.00) Dollars, to be approved by one of the Judges of this Court, conditioned that plaintiffs will pay to the defendants such sum as this Court may determine is proper if this interlocutory injunction is dissolved and held for naught.

By the court.

(Signed) RUFUS E. FOSTER,
Circuit Judge.

(Signed) WAYNE G. BORAH,
District Judge.

(Signed) T. M. KENNERLY,
District Judge.

477 *Note*

The following exhibits omitted from the printed record being transmitted in original form as per stipulation of counsel and order of court hereinafter copied at pages 816-817 of transcript of record.

(a) Tariff of Yazoo & Mississippi Valley Railroad cancelling allowances effective August 22nd, 1935.

(b) Tariff schedules of defendant carriers providing for the allowance, being second and third revised pages 175–B of Tariff I. C. C. No. 6700.

(c) Returns to questionnaire of January 14, 1932, filed with Interstate Commerce Commission by T. & P. Rwy. Co., The Missouri Pacific Lines, T. & N. O. R. R. Co., Gulf, Colo. & Santa Fe Rwy. Co.,

L. & A. Rwy. Co., and return and supplemental return of Kansas City Southern Rwy. Co., and Texarkana & Fort Smith Rwy. Co., to questionnaire.

(d) Tariff of M. L. & T. R. R. Co., I. C. C. No. 4642–B.

(e) Tariff of Texas & New Orleans Railroad Company, I. C. C. No. 4642–B, Supplement No. 2;

(f) Tariff of Texas Pacific-Missouri Pacific Terminal R. R. of New Orleans, I. C. C. No. 10 & Supplement 11 thereto.

(g) Letter of September 25, 1926, to Secretary of Interstate Commerce Commission from Morgans La. & Texas R. R. Co., and Celotex Company.

(h) Letter from Secretary of Interstate Commerce Commission, dated September 28th, 1926, in reply.

(i) Letter to Secretary of Interstate Commerce Commission dated October 8, 1926.

(j) Secretary's Reply thereto dated October 13, 1928.

(k) Tariffs of defendant railroads effective September 3, 1935. Cancelling allowance.

(l) Gulf, Mobile & Northern Tariff Supp. No. 28 to I. C. C. 1168.

(m) Tariffs of I. C. Railroad & Y. & M. V. Railroad providing for terminal allowances to Standard Oil Company at North Baton Rouge, Louisiana.

(n) Tariffs of defendants Louisiana & Arkansas Railway and N. O. Texas & Mexico Railway Company.

(o) Cancellation tariff filed by Y. & M. V. Railroad Company and other carriers to become effective on July 15, 1935.

478 I. United States District Court

No. 314 Equity. No. 315 Equity. No. 317 Equity. No. 331 Equity, B. R. Division

[Titles omitted.]

Order assigning cases for hearing on merits

Filed December 17, 1935

It is ordered by the Court that the above numbered and entitled causes be assigned for hearing on the merits before a statutory court of three judges for Thursday, January 30th, 1936, at 10:30 o'clock A. M. at New Orleans, Louisiana.

It is further ordered that counsel for the respective parties be notified of the entry of this order and of the date, time, and place of the hearing.

New Orleans, La., December 17, 1935.

(Signed) WAYNE G. BORAH,
United States District Judge.

479 In United States District Court

In Equity, No. 331 (Baton Rouge Division). In Equity, No. 314 New Orleans Division). In Equity, No. 315 (New Orleans Division). In Equity, No. 317 (New Orleans Division)

[Titles omitted.]

Order consolidating cases for trial

Filed January 30, 1936

Upon oral motion and pursuant to stipulation of counsel in open court, it is ordered that the trials of the above entitled four cases shall be consolidated and that they shall be heard and determined upon one record.

(Sgd.) T. M. KENNERLY,
District Judge.
(Sgd.) WAYNE G. BORAH,
District Judge.
(Sgd.) RUFUS E. FOSTER,
Circuit Judge.

480 In United States District Court

[Titles omitted.]

Stipulation as to record

Filed January 30, 1936

It is stipulated and agreed by and between the plaintiffs in the above entitled causes and the United States and Interstate Commerce Commission as respondents:

1. That the exhibits received in evidence by the Interstate Commerce Commission in the proceeding known as Ex Parte No. 104, Practices of Carriers affecting Operating Revenues or Expenses, Part II, Terminal Services, of which copies certified by the Secretary of the Interstate Commerce Commission are this day filed in evidence before the Court, are all of the exhibits offered before the Interstate Commerce Commission which it is necessary for the court to have and consider in the determination of the issues raised in these causes.

2. That the several exhibits bearing the following numbers, likewise received in evidence by the Commission in said proceeding and of which copies are not filed under the Certificate of the Secretary are not necessary for the court to have before it in passing on the issues:

Numbers 2 (in part) 5, 6, 8, 10, 11, 13, 15, 17, 29, 34, 41, 44, 45, 48A, 49, 50 (in part), 52, 55, 57, 59, 60, 62X, 62Y, 62xx, 63, 64, 65, 66, 67, 69, 76, 77, 78, 85, 86, 87, 88, 89, 91, 95, 100, 102, 107, 108, 109,

110, 118, 126, 127, 140 (in part), 145, 150 (in part), 157, 159, 160, 163, 169, 173, 191, 192, 250, 252, 266, 273, A5X, A–11, and A–159.

3. That of the original exhibits received in evidence by the Commission bearing colors, only those number A–23, A–24, A–27, A–37, A–46, A–70, A–71, A–72, A–94½, A–99, A–103, A–107, A–136, A–159, C–11, C–59, C–61, C–71, C–97, C–111, C–126, C–147, C–153, C–156, C–158, and C–165, have been reproduced in so far as is necessary and practical in the colors shown on the original, by direction and agreement of counsel.

481 4. That the copies certified by the Secretary of the returns to the questionnaire, issued by the Commission in this proceeding on January 14, 1932, by the Texas and New Orleans Railroad Company, Missouri Pacific Lines, Texas and Pacific Railway Company, Louisiana and Arkansas Railway Company, Gulf, Colorado and Santa Fe Railway Company, and the joint return of The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, are hereby stipulated by counsel as having been properly received and considered in evidence by the Commission and are the only copies of such returns to the questionnaire which it is necessary to be placed before this court in determining the causes herein.

5. That the twelve printed volumes of transcript and the certified exhibits as hereinabove described and referred to constitute the full record of evidence before the Interstate Commerce Commission in so far as is necessary for the Court to have the record before it in passing on the issues.

This the 30th day of January 1936.

(Signed) LUTHER M. WALTER,
JOHN S. BURCHMORE,
Solicitors for above named plaintiffs and each of them.

(Signed) DANIEL W. KNOWLTON,
For the Interstate Commerce Commission.

(Signed) ELMER B. COLLINS,
For the United States of America.

482 In United States District Court

In Equity No. 315

[Title omitted.]

Motion to change name of plaintiff

Filed January 30, 1936

Now come Colin C. Bell and Wm. Tracy Alden, Trustees of the Estate of The Celotex Company, a corporation, plaintiffs in the above entitled action, by their undersigned attorneys, and respectfully move the Court for the entry of an order for the withdrawal

of the names of the said Colin C. Bell and Wm. Tracy Alden, Trustees of the Estate of The Celotex Company, a corporation, as plaintiffs in the above entitled action and substituting The Celotex Corporation, a corporation, as plaintiff in said action, and in support of this motion allege:

Said Trustees were appointed by orders of the United States District Court for the District of Delaware entered on February 8, 1935, and March 1, 1935, In the Matter of The Celotex Company, a corporation, Debtor, In Proceedings for Reorganization under Section 77B of the Bankruptcy Act, No. 1080, and were under such orders of appointment, empowered to operate and conduct the business of The Celotex Company, and in connection therewith to institute, prosecute, and become parties to suits, actions, and proceedings at law or in equity.

On October 10, 1935, the said United States District Court for the District of Delaware in said cause No. 1080, entered its Order Confirming Plan of Reorganization, which authorized and directed, and pursuant to which the said Trustees did assign, transfer, and deliver to The Celotex Corporation, a corporation organized June 29, 1935, under the laws of Delaware, all of the assets of the Estate of The Celotex Company, including tangible and intangible property, accounts receivable, choses in action, books and records, and the rights, privileges, good will, and, in so far as permitted by law, the franchises and all other assets and property of whatsoever nature and wheresoever situated, and the said The Celotex Corporation operating and conducting the said business and desires to be submitted as plaintiff in this action, and The Celotex Corporation, a
483 corporation under the laws of the State of Delaware, by its undersigned attorneys, joins in the above and foregoing motion and asks to be substituted as plaintiff in said cause.

COLIN C. BELL and WM. TRACY ALDEN,
Trustees of the Estate of The Celotex Company, a Corporation,
THE CELOTEX CORPORATION, *a Corporation,*
By LUTHER M. WALTER,
JOHN S. BURCHMORE,
Their Attorneys.

484 In United States District Court

In Equity No. 315

[Title omitted.]

Order substituting name of plaintiff

Filed January 30, 1936

This matter coming on to be heard upon motion of plaintiffs, and upon oral stipulation of counsel entered into in open court, whereby

the parties hereto by their respective attorneys have agreed to the entry of this order:

It is ordered and decreed, that the names of Colin C. Bell and Wm. Tracy Alden, Trustees of the Estate of The Celotex Company, a corporation, be and are hereby withdrawn as plaintiffs in the above entitled action and that The Celotex Corporation, a corporation, be and is hereby substituted as the plaintiff in this cause.

Enter.

(Signed) RUFUS E. FOSTER, *Judge.*

485 In United States District Court for the Eastern District of Louisiana

In Equity No. 314 (New Orleans Division)

PAN AMERICAN PETROLEUM CORPORATION

v.

UNITED STATES OF AMERICA, ET AL.

In Equity No. 315 (New Orleans Division)

COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF THE CELOTEX COMPANY

v.

UNITED STATES OF AMERICA, ET AL.

In Equity No. 317 (New Orleans Division)

GREAT SOUTHERN LUMBER COMPANY, BOGALUSA PAPER COMPANY, INCORPORATED

v.

UNITED STATES OF AMERICA, ET AL.

In Equity No. 331 (Baton Rouge Division)

STANDARD OIL COMPANY OF LOUISIANA

v.

UNITED STATES OF AMERICA, ET AL.

In United States District Court for the Southern District of Texas

In Equity No. 690 (Houston Division)

HUMBLE OIL & REFINING COMPANY

v.

UNITED STATES OF AMERICA, ET AL.

In Equity No. 691 (Houston Division)

MAGNOLIA PETROLEUM COMPANY

v.

UNITED STATES OF AMERICA, ET AL.

In Equity No. 692 (Houston Division)

THE TEXAS COMPANY

v.

UNITED STATES OF AMERICA, ET AL.

In Equity No. 693 (Houston Division)

GULF REFINING COMPANY

v.

UNITED STATES OF AMERICA, ET AL.

In Equity No. 718 (Houston Division)

THE TEXAS COMPANY

v.

UNITED STATES OF AMERICA, ET AL.

486 Luther M. Walter, Nuel D. Belnap, John S. Burchmore, and Walter, Burchmore & Belnap, of Chicago, Illinois, for plaintiffs. Elmer B. Collins, Special Assistant to the Attorney General, Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, and Nelson Thomas, Attorney, Interstate Commerce Commission, for Defendants.

February 24, 1937

Before FOSTER, Circuit Judge, and BORAH and KENNERLY, District Judges

Opinion

Filed February 25, 1937

KENNERLY, District Judge: These are suits in Equity in the District Court of the United States for the Eastern District of Louisiana (New Orleans and Baton Rouge Divisions) and for the Southern District of Texas (Houston Division) under the Act of Congress of October 22, 1913 (38 Stat. 219, Sections 41, 45, 46, and 47 of Title 28, U. S. C. A.) by the Plaintiffs (hereinafter named) against the Defendants (hereinafter named), to enjoin, restrain and set aside Orders of the Interstate Commerce Commission requiring

that the Railroad Companies named as Defendants cease, desist from, and discontinue the payment to Plaintiffs of allowances for performing certain terminal services hereinafter more fully set out and generally referred to as "spotting."

487 The Original Report of the Commission, on which Orders complained of are based, is reported as: Propriety of Operating Practices, Terminal Services, 209 I. C. C. 11.

Supplemental Reports, on which Orders complained of are also based, will be found in the printed Reports of the Commission, as follows

Mexican Petroleum Corporation of La. Inc. Terminal Allowance,[1] 209 I. C. C. 394.

Celotex Company Terminal Allowance, 209 I. C. C. 764.

Great Southern Lumber Company—Bogalusa Paper Company Terminal Allowance, 209 I. C. C. 793.

Standard Oil Company of Louisiana Terminal Allowance, 209 I. C. C. 68.

Humble Oil & Refining Co. Terminal Allowance, 209 I. C. C. 727.

Magnolia Petroleum Company Terminal Allowance, 209 I. C. C. 93.

Texas Company Terminal Allowance at Houston, Tex., 209 I. C. C. 767.

Gulf Refining Company Terminal Allowance, 209 I. C. C. 756.

Texas Company Terminal Allowance at Port Arthur, Texas, 44th Supplemental Report.

There were applications for Interlocutory Injunctions which were heard by a Three-Judge-Court organized under Section 47,

488 Title 28, U. S. C. A., and granted, and the cases have now been heard together, on one Record, on the merits by the same Court, and may be disposed of in one opinion.

(a) No. 314 is a suit by the Pan American Petroleum Corporation, Plaintiff, against the United States of America, The Yazoo & Mississippi Valley Railroad Company (for brevity called Y. & M. V. Ry. Co.), and the Illinois Central Railroad Company, with the Interstate Commerce Commission intervening. Plaintiff is the successor of the Mexican Petroleum Corporation of Louisiana, Incorporated (for brevity called Mexican Corporation), and owns and operates as did Mexican Corporation, at Destrehan, Louisiana, on the line of the Y. & M. V. Ry. Co., a large oil refinery plant. The plant is situated south of and adjacent to the tracks of the Y. & M. V. Ry. Co. There are within the plant enclosure, tracks which connect with the tracks of Ry. Co., and are used for the transportation of cars moving in interstate commerce between the places where they are loaded and unloaded within the enclosure of the plant and the Ry. Co.'s tracks, the service of such transportation being performed, formerly by Mexican Corporation and now by Plaintiff under a tariff promulgated by the Ry. Co., reading as follows:

[1] Pan American Petroleum Corporation, petitioner in No. 314, In Equity, in successor to the Mexican Petroleum Corporation of Louisiana, Incorporated, in ownership and operation of Destrehan refinery.

"Terminal Allowances to the Mexican Petroleum Corporation of Louisiana at Destrehan, La.

"On traffic to and from points on or reached via The Yazoo and Mississippi Valley Railroad Company or connections.

"On all carload shipments (including trap cars containing 10,000 pounds or more of less-carload freight) destined to or coming from the plant of the Mexican Petroleum Corporation of Louisiana at Destrehan, La., the terminal switching service is performed by the Mexican Petroleum Corporation of Louisiana for account of The Yazoo and Mississippi Valley Railroad Company. Such terminal switching service, for which this allowance is made, consists of
489 the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

"For such terminal service performed for The Yazoo and Mississippi Valley Railroad Company by the Mexican Petroleum Corporation of Louisiana, at Destrehan, La., the Mexican Petroleum Corporation of Louisiana will be allowed 90 cents per loaded car, which will include the handling of the empty cars in the reverse direction.

"This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operations of the plant facility made during period June 4, 1929, to June 8, 1929, inclusive, also June 10, 1929, and filed with the Interstate Commerce Commission."

The cease and desist Order of the Commission of which Plaintiff complains as requiring Defendant Railroads to cease and desist making such allowance, under such Tariff, is dated June 25, 1935, and is as follows:

"Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by The Yazoo and Mississippi Valley Railroad Company to the Mexican Petroleum Corporation of Louisiana, Incorporated, for performance by the latter of spotting service within its plant at Destrehan, La., and the Commission having under date of May 14, 1934, made and filed a report Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Mexican Petroleum Corporation of Louisiana, Incorporated, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by
490 the payment of said allowance The Yazoo and Mississippi Valley Railroad Company violates the Interstate Commerce Act as set forth in the above-mentioned reports:

"It Is Ordered, That The Yazoo and Mississippi Valley Railroad Company be, and it is hereby, notified and required to cease and desist on or before August 22, 1935, and thereafter to abstain from such unlawful practice.

"By the Commission, Division 6."

(b) No. 315 is a suit by Colin C. Bell and Wm. Tracy Alden, Trustees of the Celotex Company, Plaintiffs[2] (for brevity called Celotex Corporation), against the United States of America, Texas & New Orleans Railroad Company (for brevity called T. & N. O.), the Texas & Pacific Railway Company (for brevity called T. & P.), the Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees) (for brevity called M. P.), and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans (for brevity called Terminal Co.), with the Interstate Commerce Commission intervening.

Celotex Corporation (as did its predecessors) owns and operates a plant for the manufacture of celotex board, manufactured principally from bagasse, the dried refuse of sugar cane. The plant is located at Marrero, Louisiana. The plant is served by the three Defendant Railroads (T. & N. O., T. & P., and M. P.), the Terminal Company performing the switching for the T. & P. and the M. P.

The plant is in two sections which are separated by the tracks of the T. & N. O. and the Terminal Company. As in case No. 314, there are tracks used for the transportation of cars moving in interstate commerce between the tracks of the T. & N. O. and the tracks of the Terminal Company, upon the one hand, and the place or places within the plant enclosure, where cars are loaded and unloaded, the service of such transportation being performed by Celotex Corporation (and by its predecessors), for which, first under agree-
491 ments openly made, and later under tariffs, duly promulgated, an allowance was made Celotex Corporation.

The Order of the Commission of which Plaintiff complains seeks to require the Defendant Railroads to cease and desist making such allowance.

(c) No. 317 is a suit by the Great Southern Lumber Company (for convenience called Lumber Company) and Bogalusa Paper Company, Incorporated (for convenience called Paper Company), Plaintiffs, against the United States of America, Gulf, Mobile and Northern Railroad Company, with the Interstate Commerce Commission intervening.

Lumber Company is engaged in the lumber and logging business, and the Paper Company in the paper manufacturing business. They together occupy a large industrial area near Bogalusa, Louisiana. Adjacent to them, but in no manner connected with them, are three other industrial plants, which are referred to for convenience as adjacent plants. As in case No. 314, there are tracks used for the transportation of cars moving in interstate commerce between the tracks of Railroad Company and the point or points where cars are loaded or unloaded by Lumber Company and Paper Company and

[2] Since the institution of the suit, the Trustees have been succeeded by the Celotex Corporation of Delaware.

adjacent plants. Lumber Company performs this service of transportation not under a regular tariff such as was promulgated in No. 314, but in the form of monthly lump sum reimbursements by the Railroad Company, for wages and costs of materials and supplies used in connection with such work. The Order of the Commission complained of seeks to require the Railroad to cease and desist making such lump sum monthly payments.

(d) No. 331 is a suit by the Standard Oil Company of Louisiana, Plaintiff, against the United States of America, Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company (Baldwin and Thompson, Trustees), with the Interstate Commerce Commission intervening.

Plaintiff owns, maintains, and operates an oil refinery (one
492 of the largest in the world) at North Baton Rouge, Louisiana.

As in Case No. 314, there are tracks connecting those belonging to or used by the Railroad Defendants with the place or places where cars are unloaded in the plant, and over which tracks cars moving in interstate commerce are transported by Plaintiff under a tariff which makes Plaintiff an allowance for such service. The Order of the Commission complained of seeks to require the Defendant Railroads to cease and desist making such allowance.

(e) No. 690 is a suit by the Humble Oil & Refining Company, Plaintiff, against the United States of America, the Texas & New Orleans Railroad Company, Missouri Pacific Railroad Company (Baldwin and Thompson, Trustees), the Beaumont, Sour Lake and Western Railway Company (Baldwin and Thompson, Trustees), Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns and operates a large oil refinery at Baytown, Texas, which is served by the Railroad Defendants. Tracks connect numerous locations for loading and unloading cars within the Refinery property with the tracks of the Railroad Companies, over which tracks cars moving in interstate commerce are transported by Plaintiff, and for which Plaintiff is made an allowance under tariffs of the Railroads. The Order complained of required the Railroads to cease and desist making such allowance.

(f) No. 691 is a suit by the Magnolia Petroleum Company, Plaintiff, against the United States of America, the Kansas City Southern Railway Company, and the Texas & New Orleans Railroad Company, Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns and operates an oil refinery at Chaison, Texas. The Railroad Defendants have tracks adjacent to such refinery, and there are tracks leading therefrom to the loading and unloading points within the refinery property, over which tracks cars moving in interstate commerce are transported by Plaintiff, and for which Plaintiff is made an allowance under tariffs of the Railroad Companies. The Order complained of requires the Railroads to cease and desist making such allowance.

493 (g) No. 692 is a suit by the Texas Company, Plaintiff, against the United States of America, the Texas & New Orleans Railroad Company, the Missouri Pacific Railroad Company (Baldwin and Thompson, Trustees), the International-Great Northern Railroad Company (Baldwin & Thompson, Trustees), the Beaumont, Sour Lake and Western Railway Company (Baldwin and Thompson, Trustees), the St. Louis, Brownsville & Mexico Railway Company (Baldwin and Thompson, Trustees), the Atchison, Topeka & Santa Fe Railway Company, the Gulf, Colorado & Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company of Texas, and the Burlington-Rock Island Railroad Company, Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns a plant at Houston, Texas, referred to as the Calena-Signal Plant, served by the Defendant Railroads, but the Port Terminal Railroad at Houston generally performs switching services for the Railroads. Plaintiff (however, transports cars moving in interstate commerce over tracks between those of the Railroads and Terminal Company and the point within the plant where cars are loaded or unloaded, for which Plaintiff is made an allowance under tariffs promulgated by the Railroad Defendants. The Order of the Commission complained of directs the Railroad Defendants to cease and desist making such allowance.

(h) No. 693 is a suit by the Gulf Refining Company, Plaintiff, against the United States of America, the Texas & New Orleans Railroad Company, and the Kansas City Southern Railway Company, Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns and operates a Refinery Plant at Port Arthur, Texas, which is served by the Defendant Railroads. Over tracks leading from the point or points of the loading or unloading of cars, Plaintiff transports cars moving in interstate commerce, receiving therefor an allowance under tariffs of the Railroad Defendants. The Order complained of directs the Railroads to cease and desist making such allowance.

(i) No. 718 is a suit by the Texas Company, Plaintiff, against the United States of America, the Interstate Commerce Commis-
494 sion, the Texas & New Orleans Railroad Company, and the Kansas City Southern Railroad Company.

Plaintiff is engaged in the refining, manufacture and sale of petroleum and its products, and owns and operates three plants, known as the Asphalt Plant at Port Neches, the Island Plant, and the Refinery Plant at Port Arthur, Texas. All of the Plants are large and extensive in size, and are served by the Defendant Railroads. Over tracks connecting the point or points of loading and unloading with the tracks of the Railroad Companies, Plaintiff transports cars moving in interstate commerce, for which it receives an allowance under tariffs of the Railroad Defendants. The Order complained of directs the Railroads to cease and desist making such allowance.

Except in No. 317, where the allowance is in the form of a monthly lump sum, the Tariff quoted in the statement in No. 314 is typical of the tariffs in the other cases, and the Order of the Commission there quoted is typical of the Order complained of in the other cases.

The Defendant Railroads, in obedience to such Orders of the Commission, undertook to cancel and discontinue the allowances set forth in such Tariffs, and these suits followed.

1. The first question is whether the work in transporting, switching, and spotting cars, for which the Plaintiffs herein were paid, or were made an allowance under the Tariffs, is a service which the Railroads involved are required to perform as transportation or a part of transportation.

495 We think that under the evidence, the question must be affirmatively answered. We think it clear that the railroads involved are required, under the Law, to perform such service as a part of transportation. Subdivisions 3, 4, 5, and 6, Section 1, Title 49, U. S. C. A. C. & O. Ry. Co. v. Westinghouse Co., 270 U. S. 265, 70 L. Ed. 576. Mitchell Coal Co. v. Penna. R. R. Co., 230 U. S. 264, 57 L. Ed. 576. Union Lime Co. v. Chicago & N. W. Ry. Co., 233 U. S. 217, 58 L. Ed. 924. Los Angeles Switching Case, 234 U. S. 310, 58 L. Ed. 1319.

There is no evidence that such Railroads are prohibited by the Plaintiffs from performing such service, nor that there are physical conditions which prevent them from doing so. Indeed, there appears to be no "abnormal conditions" of any kind which would serve to relieve the Railroad involved of the duty. C. & O. Ry. Co. v. Westinghouse, supra.

2. Having the duty to perform the service, the Railroads involved properly and lawfully contracted with the respective Plaintiffs to perform it, and properly and lawfully made such Plaintiffs allowances therefor in their Tariffs. Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, 56 L. Ed. 83. Mitchell Coal & Coke Co. v. Penna. R. R. Co., 230 U. S. 247, 57 L. Ed. 1472. Atchison, Topeka & Santa Fe Railway Co. v. U. S. 232, U. S. 199, 58 L. Ed. 568.

496 3. While the Commission without doubt has the power (Par. 1, Sec. 15, Title 49, U. S. C. A.) to determine whether such allowances are reasonable or unreasonable in amount, whether they do or do not give the Plaintiffs an unlawful preference, or whether they unlawfully discriminate against others similarly situated, etc. (Interstate Commerce Com. v. Louisville & Nashville R. R. Co., 227 U. S. 88, 57 L. Ed. 431, Southern Pacific Co. v. Interstate Commerce Com., 219 U. S. 433, 55 L. Ed. 283, Interstate Commerce Com. v. Stickney, 215 U. S. 98, 54 L. Ed. 112, Interstate Commerce Com. v. Northern Pacific Ry. Co., 216 U. S. 538, 54 L. Ed. 608, United States v. Baltimore & Ohio R. R. Co., 293 U. S. 454, 79 L. Ed. 587), we think that under the evidence here the Commission was without power to wholly prohibit such allowances.

4. To support a cease and desist order because the rate or practice is unreasonable, preferential, discriminatory, etc., there must be the necessary jurisdictional findings of fact by the Commission. United States v. Chicago, Milwaukee, St. Paul, and Pacific Railroad Co., 294 U. S. 499, 79 L. Ed. 1023. Atchison, Topeka, & Santa Fe Ry. Co. v. United States, 295 U. S. 193, 79 L. Ed. 1382. Florida v. United States, 282 U. S. 194, 75 L. Ed. 291. Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433, 55 L. Ed. 283.
497 Beaumont, Sour Lake, & Western Ry. Co. v. United States, 282 U. S. 74, 75 L. Ed. 221. No sufficient findings appear either in the Orders themselves, or in the Reports which are made a part of the Orders.

It follows that Plaintiffs are entitled to the relief for which they pray.

Let Decree be drawn and presented accordingly, along with suggested Findings of Fact and Conclusions of Law if desired. The Court reserves the right to file Findings of Fact and Conclusions of Law in either or all the cases upon request of any party.

Feb. 24, 1937.

The Clerk will file this Opinion and notify the attorneys for the respective parties.

T. M. KENNERLY, *Judge.*

498 In United States District Court

In Equity No. 314

PAN AMERICAN PETROLEUM CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA, THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, DEFENDANTS; INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

Filed April 28, 1937

The above entitled cause came on for final hearing upon petition for permanent injunction, and having been heard by a court of three judges, organized pursuant to the statute and the arguments and briefs of counsel for all parties having been fully heard and considered, and the court having concluded, for the reasons set forth in its written opinion filed herein on February 24, 1937, that the relief prayed should be granted.

It is therefore ordered, adjudged, and decreed that the enforcement, operation, and execution of the order of the Interstate Commerce Commission, entered June 25, 1935, and entitled Mexican Petroleum Corporation of Louisiana, Incorporated, Terminal Allowance Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses Part II, Terminal Services, and directed

against The Yazoo and Mississippi Valley Railroad Company, respondent in said proceeding, are hereby permanently enjoined and said order is hereby set aside and annulled.

This 28th day of April 1937.

(Signed) RUFUS E. FOSTER,
Circuit Judge.

(Signed) WAYNE G. BORAH,
District Judge.

(Signed) T. M. KENNERLY,
District Judge.

499 In United States District Court for the Eastern District of Louisiana, New Orleans Division

In Equity No. 315

THE CELOTEX CORPORATION, SUBSTITUTED FOR COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF THE CELOTEX COMPANY, A CORPORATION, PLAINTIFFS

vs.

UNITED STATES OF AMERICA, TEXAS AND NEW ORLEANS RAILROAD COMPANY, THE TEXAS AND PACIFIC RAILROAD COMPANY, MISSOURI PACIFIC RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES), TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS, DEFENDANTS; INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

Filed April 28, 1937

The above entitled cause came on for final hearing upon petition for permanent injunction, and having been heard by a court of three judges, organized pursuant to the statute, and the argument and briefs of counsel for all parties having been fully heard and considered, and the court having concluded, for the reasons set forth in its written opinion filed herein on February 24, 1937, that the relief prayed should be granted:

It is, therefore, ordered, adjudged, and decreed that the enforcement, operation, and execution of the order of the Interstate Commerce Commission, entered July 11, 1935, and entitled Celotex Company Terminal Allowance Ex Parte No. 104 Practices of Carriers Affecting Operating Revenues or Expenses Part II, Terminal Services, and directed against the Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company, the Texas and Pacific Railway Company, and the Texas Pacific-Missouri Pacific Terminal Railroad Company of New Orleans, respondents in said pro-

ceeding, are hereby permanently enjoined, and said order is hereby set aside and annulled.

This 28th day of April 1937.

(Signed) RUFUS E. FOSTER,
Circuit Judge.

(Signed) WAYNE G. BORAH,
District Judge.

(Signed) T. M. KENNERLY,
District Judge.

500 In United States District Court for the Eastern District of Louisiana, New Orleans Division

No. 317

GREAT SOUTHERN LUMBER COMPANY, BOGALUSA PAPER COMPANY, INCORPORATED, PLAINTIFFS

vs.

UNITED STATES OF AMERICA, GULF, MOBILE AND NORTHERN RAILROAD COMPANY, DEFENDANTS; INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

Filed April 28, 1937

The above entitled cause came on for final hearing upon petition for permanent injunction and having been heard by a court of three judges, organized pursuant to the statute, and the argument and briefs of counsel for all parties having been fully heard and considered, and the court having concluded, for the reasons set forth in its written opinion filed herein on February 24, 1937, that the relief prayed should be granted:

It is, therefore, ordered, adjudged, and decreed that the enforcement, operation, and execution of the order of the Interstate Commerce Commission, entered July 12, 1935, and entitled Great Southern Lumber Company-Bogalusa Paper Company Terminal Allowance Ex Parte No. 104 Practices of Carriers Affecting Operating Revenues or Expenses Part II, Terminal Services, and directed against the Gulf, Mobile and Northern Railroad Company, respondent in said proceeding, are hereby permanently enjoined and said order is hereby set aside and annulled.

This 28 day of April 1937.

(Signed) RUFUS E. FOSTER,
Circuit Judge.

(Signed) WAYNE G. BORAH,
District Judge.

(Signed) T. M. KENNERLY,
District Judge.

501 In United States District Court for the Eastern District of Louisiana, Baton Rouge Division

In Equity No. 331

STANDARD OIL COMPANY OF LOUISIANA, PLAINTIFF

vs.

UNITED STATES OF AMERICA, ILLINOIS CENTRAL RAILROAD COMPANY, THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, LOUISIANA & ARKANSAS RAILWAY COMPANY, NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES), DEFENDANTS; INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

Entered April 28, 1937

The above entitled cause came on for final hearing upon petition for permanent injunction and having been heard by a court of three judges, organized pursuant to the statute, and the argument and briefs of counsel for all parties having been fully heard and considered, and the court having concluded, for the reasons set forth in its written opinion filed herein on February 24, 1937, that the relief prayed should be granted:

It is, therefore, ordered, adjudged, and decreed that the enforcement, operation, and execution of the order of the Interstate Commerce Commission, entered May 14, 1935, and entitled Standard Oil Company of Louisiana Terminal Allowance Ex Parte No. 104 Practices of Carriers Affecting Operating Revenues or Expenses Part II, Terminal Services, and directed against The Yazoo and Mississippi Valley Railroad Company, the Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company, respondents in said proceeding, are hereby permanently enjoined and said order is hereby set aside and annulled.

This 28 day of April 1937.

(Sgd.) RUFUS E. FOSTER,
Circuit Judge.

(Sgd.) WAYNE G. BORAH,
District Judge.

(Sgd.) T. M. KENNERLY,
District Judge.

502 In United States District Court

In Equity No. 314 (New Orleans Division)

PAN AMERICAN PETROLEUM CORPORATION

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 315 (New Orleans Division)

THE CELOTEX CORPORATION, SUBSTITUTED FOR COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF THE CELOTEX COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 317 (New Orleans Division)

GREAT SOUTHERN LUMBER COMPANY, BOGALUSA PAPER COMPANY INCORPORATED

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 331 (Baton Rouge Division)

STANDARD OIL COMPANY OF LOUISIANA

vs.

UNITED STATES OF AMERICA ET AL.

Findings of fact and conclusions of law

Filed April 28, 1937

Findings of fact

The foregoing four cases having been heard and tried, by agreement of counsel, on one consolidated record, embracing the record before the Interstate Commerce Commission and other relevant evidence, upon due consideration the court enters the following findings of fact:

1. These are suits in equity to enjoin, restrain, and set aside certain orders of the Interstate Commerce Commission requiring defendant railroad companies to cease, desist from, and discontinue the payment to plaintiffs of allowances for performing certain terminal services hereinafter more fully set out and generally referred to as "spotting."

2. The original report of the Commission, on which the orders complained of are based, is reported as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, 209 I. C. C. 11. The supplemental reports on which the orders complained of are also based will be found in the printed reports of the Commission as follows:

Standard Oil Company of Louisiana Terminal Allowance, 209 I. C. C. 68.

Mexican Petroleum Corporation of Louisiana, Incorporated, Terminal Allowance, 209 I. C. C. 394.

Celotex Company Terminal Allowance, 209 I. C. C. 764.

Great Southern Lumber Company—Bogalusa Paper Company, Terminal Allowance, 209 I. C. C. 793.

503 3. Pan American Petroleum Corporation, plaintiff in No. 314, is the successor of the Mexican Petroleum Corporation of Louisiana, Inc. (for brevity called Mexican Corporation) and owns and operates as did Mexican Corporation a large oil refinery plant at Destrehan, Louisiana. The plant is situated south of and adjacent to the tracks of defendant, The Yazoo and Mississippi Valley Railroad Company (for brevity called Y. & M. V.). There are within the plant enclosure tracks which connect with the tracks of the railway company and are used for the transportation of cars moving in interstate commerce between the places where they are loaded and unloaded and within the enclosure of the plant and the railway company's tracks the service of such transportation being performed, formerly by Mexican Corporation and now by said plaintiff, under a tariff promulgated by the railway company, reading as follows:

"Terminal Allowances to the Mexican Petroleum Corporation of Louisiana, at Destrehan, La.

"On Traffic to and from points on or reached via The Yazoo and Mississippi Valley Railroad Company or connections.

"On all carload shipments (including trap cars containing 10,000 pounds or more of less carload freight) destined to or coming from the plant of the Mexican Petroleum Corporation of Louisiana, at Destrehan, La., the terminal switching service is performed by the Mexican Petroleum Corporation of Louisiana for account of The Yazoo and Mississippi Valley Railroad Company. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

"For such terminal service performed for The Yazoo and Mississippi Valley Railroad Company by the Mexican Petroleum Corporation of Louisiana, at Destrehan, La., the Mexican Petroleum Corporation of Louisiana will be allowed 90 cents per loaded car which will include the handling of the empty cars in the reverse direction.

504 "This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operations

of the plant facility made during period June 4, 1929, to June 8, 1929, inclusive, also June 10, 1929, and filed with the Interstate Commerce Commission."

The order complained of in No. 314 requiring the said railroad defendant to cease and desist making such allowance, is as follows:

"Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by The Yazoo and Mississippi Valley Railroad Company to the Mexican Petroleum Corporation of Louisiana, Incorporated, for performance by the latter of spotting service within its plant at Destrehan, La., and the Commission having under date of May 14, 1934, made and filed a report, Propriety of Operating Practices Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Mexican Petroleum Corporation of Louisiana, Incorporated, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the payment of said allowance The Yazoo and Mississippi Valley Railroad Company violates the Interstate Commerce Act as set forth in the above mentioned reports:

"It is ordered, that the Yazoo and Mississippi Valley Railroad Company be, and it is hereby notified and required to cease and desist on or before August 22, 1935, and thereafter to abstain from such unlawful practice.

"By the Commission, Division 6."

4. Standard Oil Company of Louisiana, plaintiff in No. 331, owns, maintains, and operates an oil refinery, one of the largest in the world, at North Baton Rouge, Louisiana, which is served by The Yazoo and Mississippi Valley Railroad Company, Louisiana
505 & Arkansas Railway Company and the New Orleans, Texas & Mexico Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees). As in case No. 314 there are tracks connecting those belonging to or used by the railroad defendants with the places where cars are unloaded in the plant and over which tracks cars moving in interstate commerce are transported by plaintiff under tariffs which make plaintiff an allowance for such service of $1.20 per loaded car. The order complained of was entered May 14, 1935, and seeks to require the defendant railroads to cease and desist making such allowance.

5. Colin C. Bell and Wm. Tracy Alden, Trustees of the Estate of the Celotex Company, plaintiffs in No. 315, since the institution of the suit have been succeeded by The Celotex Corporation of Delaware (for brevity called Celotex Corporation), substituted as plaintiff. Celotex Corporation (as did its predecessors) owns and operates a plant for the manufacture of celotex board, manufactured principally from bagasse, the dried refuse of sugar cane. The plant is located at Marrero, Louisiana, and is served by the three defendant

railroads, Texas and New Orleans Railroad Company, Texas & Pacific Railway Company, and Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees) and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans (for brevity called the Terminal Company). The Terminal Company performs the switching for the Texas and Pacific and Missouri Pacific. The plant is in two sections, which are separated by the tracks of the Texas and New Orleans and The Terminal Company. As in case No. 314, there are tracks used for the transportation of cars moving in interstate commerce between the tracks of the Texas and New Orleans and the tracks of the Terminal Company upon the one hand, and the place or places within the plant enclosure where cars are loaded and unloaded, the service of such transportation being performed by Celotex Corporation (and by its predecessors) for which, under agreements openly made and under tariffs duly promulgated, an allowance of $1.00 per loaded car was made Celotex Corporation. The order complained of was entered July 11, 1935, and seeks to require the defendant railroads to cease and desist making such allowance.

506 6. Great Southern Lumber Company (for convenience called Lumber Company) and Bogalusa Paper Company, Incorporated (for convenience called Paper Company), plaintiffs in No. 317, are engaged respectively in the lumber and logging business and in the paper manufacturing business. They together occupy a large industrial area near Bogalusa, Louisiana. Adjacent to them, but in no manner connected with them, are three other industrial plants, which are referred to for convenience as adjacent plants. As in case No. 314, there are tracks used for the transportation of cars moving in interstate commerce between the tracks of the defendant, Gulf, Mobile and Northern Railroad Company and the point or points where cars are loaded or unloaded by the Lumber Company and Paper Company and adjacent plants. The Lumber Company performed this service of transportation, not under a regular tariff such as was promulgated in No. 314, but in the form of monthly lump sum reimbursements by the Railroad Company for wages and costs of material and supplies used in connection with such work. The order of the Commission complained of was entered July 12, 1935, and seeks to require the railroad company to cease and desist making such lump sum monthly payments. Subsequent to such order the defendant Railroad Company filed with the Commission its new tariff effective August 29, 1935, providing an allowance of 93 cents per loaded car for the terminal switching services therein described.

7. The tariff above quoted in the finding in No. 314 is typical of the tariffs in other cases, except in No. 317 where the so-called allowance was in the form of a monthly lump sum payment, but the carrier subsequently has filed a tariff similar to the tariff in No. 314. The order of the Commission quoted in the finding in No. 314 is typical of the order complained of in the other three cases.

8. The defendant railroads in obedience to the said several orders of the Commission undertook to cancel and discontinue the allowances set forth in such tariffs and these suits followed.

9. Under the evidence, the transporting, switching, and spotting of cars, for which the plaintiffs herein are made an allowance under the tariffs, is a service which the railroads involved are required to perform, as transportation.

507 10. The carriers serving industries of plaintiffs have not provided in their published tariffs any separately published charges for such terminal switching services, to be exacted in addition to the published freight rates.

11. There is no evidence that the railroads serving these industries have been prohibited by any of the plaintiffs from performing such terminal service, or that there are physical conditions which prevent them from doing so, or that there are any abnormal conditions of any kind which would serve to relieve the railroads involved in the duty of performing "spotting" service at the industries of each of the plaintiffs.

12. Having the duty to perform the aforesaid service, the railroads involved contracted with the respective plaintiffs to perform it, and filed with the Commission their tariffs providing for such allowances.

13. In none of these cases was there any finding of the Commission that the allowances in question was or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial; nor was there any substantial evidence on which the Commission could have based such findings.

Conclusions of law

Upon the consolidated record in these cases, and the foregoing findings of fact, the court enters the following conclusions of law:

1. The work in transporting, switching, and spotting cars, for which the plaintiffs herein were made an allowance under the tariffs of the railroads serving their industries, is a service which the railroads involved are required, under the law, to perform as a part of transportation.

2. The railroads having the duty to perform the service, properly and lawfully were entitled to contract with the respective plaintiffs to perform the service and to provide reasonable allowances therefor in their tariffs published and filed with the Interstate Commerce Commission.

508 3. While the Commission without doubt has the power to determine whether such allowances are reasonable or unreasonable in amount and whether they do or do not give the plaintiffs an unlawful preference, or whether they unlawfully discriminate against others similarly situated under the evidence here the Commission was without power wholly to prohibit such allowances.

4. To support a cease and desist order by the Commission, there must be the necessary jurisdictional findings of fact by the Commission

that the rate or practive complained of was unreasonable, unjustly preferential, unduly discriminatory, or otherwise unlawful, or the order is void. No sufficient findings appear either in the orders themselves in the present cases or in the reports which are made a part of the orders.

5. The orders of the Commission in the present cases are beyond its statutory power and should be set aside.

(Signed) RUFUS E. FOSTER,
Circuit Judge.
(Signed) WAYNE G. BORAH,
District Judge.
(Signed) T. M. KENNERLY,
District Judge.

Entered April 28, 1937.

509 In United States District Court

Narrative Statement of Evidence Before Interstate Commerce Commission

Filed October 15, 1937

W. A. RAMBACH, Assistant to the Vice President of Traffic of the Missouri Pacific Railroad, was called as a witness, being duly sworn and testified as follows:

DIRECT EXAMINATION

I have been connected with the Missouri Pacific for approximately thirty-five years, all of the time in the traffic department (R. 4939).

In connection with the plant of the Fisher Lumber Corporation at Wisner, Louisiana, our current tariff provides for an allowance of $3.00 per car at Wisner on lumber and an allowance of $1.00 per car on logs (R. 4939).

Under date of October 2, 1917, an application was filed with Secretary McGinty of the Interstate Commerce Commission asking for authority to allow $2.00 per car to the Pritchard Wheeler Lumber Company in lieu of the railroad performing the service. This application was made in accordance with the findings of the Commission in I. & S. Docket 11. The Commission authorized the allowance of $2.00 per car on the outbound movement under date of October 8, 1917.

Director BARTEL. Mr. Rambach, at the time you made that application to the Commission, would it have been physically possible for the Missouri Pacific to have operated over those tracks and placed cars (R. 4939)?

The WITNESS. I can't tell you that at this late date. Our records won't disclose all of that, but we must bear this in mind, that I. & S. 11 covers the entire lumber situation in the Southwestern Territory,

and when the investigation was started, we had literally hundreds of so-called tap lines. The Commission decided that certain of those tap lines should not continue as railroads, but specifically set up that an allowance might be made the plant, so in this spread of time, we have entirely gotten away from track conditions or anything of the sort as to our ability to serve the plant. I say gotten away from it entirely—there may be some exceptions as to this lumber business. There are some cases I recall where our operating

510 officials specifically state that the service performed by the lumber companies would save the railroad money. In that case, we made the application for the allowance, and in each case we have the Commission's authority to make the allowance (R. 4940).

The WITNESS. On January 22, 1927, the railroads sought from the Commission authority to change the allowance from the Pritchard-Wheeler Lumber Company to the Fisher Lumber Corporation. Under date of January 25, 1927, a letter from Secretary McGinty, initials W. C. S.: L. J. P. F., authorized the allowance of $2.00 per car which had been made the Pritchard-Wheeler Lumber Company at Wisner to be transferred to the Fisher Lumber Corporation (R. 4940).

The original allowance for service less than one mile, as listed by the Commission in all these cases, was $2.00 per car.

Effective April 7, 1919, under Fifth Supplemental Order of I. & S. 11, that allowance of $2.00 became $2.50. Under Sixth Supplemental Order, effective August 15, 1920, that became $3.20, and under the Seventh Supplemental Order effective July 21, 1922, it became $3.00. It is the $3.00 allowance we are talking to in most of these cases (R. 4940–1).

A. The original application with respect to the allowance at Ferriday was made under the name of the Fisher-Hurd Lumber Company June 23, 1925. Authority was extended by Secretary McGinty in his letter of July 2, 1925, file W. C. S.: T. L., and incidentally, most of these authorities granted the right to make refund for the interim between the date of the application and the date the tariff was filed and made effective (R. 4941).

The WITNESS. Yes. That allowance of $3.00 to the Fisher Lumber Company is set out in Missouri Pacific Tariff 8768–A, I. C. C. A–7912. Under date of January 25, 1927, initials, W. C. S.: L. J. P. F., Secretary McGinty extended authority to transfer the allowance in the name of the Fisher-Hurd Lumber Company, to that of the Fisher Lumber Corporation (R. 4941).

511 Q. All right. Mr. Rambach, do you consider that the allowances that you have cited and made to the industries, to the Fisher Lumber Corporation, play any part in the rate structure on Lumber?

A. It was taken into account in Docket I. & S. 11. It must be recognized that our lumber rate adjustment is a group adjustment, and you might say the territory south of the Arkansas River in

Arkansas, running down into Louisiana forms one origin group on traffic going to St. Louis, north and east thereof, Missouri River, out in Kansas. So, for the one rate the railroads perform varying amounts of service. In some cases the rates apply from main line points, in other cases from branch line points, and in still other cases the same rate applies from short, connecting railroads, and at one time they applied from these industries in another guise, through the allowance to so-called tap lines, and those tap lines were abolished and the allowances made to the lumber companies, so that all the plants have been put on a uniform basis as to cost (R. 4942).

The rates from the so-called yellow pine blanket generally apply from the mills and also apply from the station if traffic were tendered us there on our team track (R. 4942).

The WITNESS. The assignment for today includes allowances to the French White Manufacturing Company at Arkansas City, Arkansas, and the Frost-Johnson Lumber Company at Bartholomew Spur, Louisiana. In both of these cases we had the Commission's approval of the allowances being made to the lumber companies, and what I have said with respect to the plants at Ferriday and Wisner applies equally to these plants (R. 4950).

512 Director BARTEL. Now, Mr. Rambach, while you are on the stand, I notice in the return to the questionnaire filed by the Missouri Pacific, they did not report an allowance being paid to the Celotex Company. Do you know the reason for that?

The WITNESS. No, I don't, off hand; but I am rather of the opinion that the allowance was made through the T. P.-M. P. terminal——

Director BARTEL. I think that is correct, but my understanding——

The WITNESS. And that does not come under the operation of the Missouri Pacific. That is a separate unit.

Director BARTEL. My understanding is from the tariff of the T. P.-M. P. terminal, that the terminal handles traffic routed over the Missouri Pacific, and on which the Missouri Pacific gets the road haul.

The WITNESS. Yes.

Director BARTEL. And in that event the Missouri Pacific, as I see it, would be the one to make the allowance, would it not?

The WITNESS. No; I think not. I think that is made by the M. P.-T. P. terminal, but in their operation they may charge it up to Missouri Pacific. I don't think we have that published.

(Fol. A–466.) Director BARTEL. The Celotex Company is cited for hearing this afternoon, but the Missouri Pacific did not report making an allowance to that company, and neither did the Texas Pacific.

513 I would like to read from Item 10 of the M. P.-T. P. tariff, I. C. C. Number 10:

"The Missouri Pacific Railroad and the T. & P. Railway Company, their successors or assigns, own the right to use the Texas Pacific-

Missouri Pacific Terminal Company Railroad of New Orleans' tracks and facilities. On traffic to and from stations shown in item number 125, via these lines, or to *and from stations shown in item 125, via these lines, or to* and from industries and warehouses located on Texas-Pacific-Missouri Pacific Terminal Railroad of New Orleans' tracks, moving from and to points beyond the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans' stations, via these lines, will be treated as their traffic and handled under the tariffs published by these companies, where the Missouri Pacific Railroad Company and/or the Texas & Pacific Railway Company receive a line haul to and from stations west of mile post nine."

The WITNESS. Still I don't know that would come under the T. P. or Missouri Pacific line haul tariff. If it is an allowance to the industry for the service performed by the terminal company, then the terminal company would pay (fol. A–467) the allowance. I am not sure of that. I haven't looked up any tariff.

Director BARTEL. The reason I am mentioning it at this time, I would like for you to check up the tariff because the Celotex people will be on this afternoon and I want to inquire about that.

The WITNESS. I will be glad to look it up.

Director BARTEL. That is all, Mr. Rambach.

(Witness excused.)

514 F. A. Key, Jr., Traffic Manager, Louisiana & Arkansas Railway Company, was called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

I have been employed in the capacity of General Freight Agent, subsequently as Traffic Manager, since August 1926.

In connection with my work I have charge of the publication of all rate tariffs, including those having to do with switching allowances at stations which we serve.

In the instant case, namely, the allowances to the Fisher Lumber Corporation, I find that the records of this company indicate that the Fisher-Hurd Lumber Company established a mill in the vicinity of our line at Ferriday, Louisiana, during 1924–1925. At the time the mill was constructed we had no station at Ferriday, and the nearest approach to the town of Ferriday was through Concordia, Louisiana, our interchange point with the Missouri Pacific Railroad, (R. 4952).

The Fisher-Hurd Lumber Company indicated a desire to draw log tonnage from points on the Louisiana & Arkansas Railway for handling at its new mill, and after some negotiation, our people decided to establish a station at Ferriday, approximately one-half mile west of the station formerly known as Concordia Junction.

At this station Ferriday a spur track was constructed to serve the new plant of the Fisher-Hurd Lumber Company.

Prior to this action, the Missouri Pacific Railroad had secured authority from the Commission and published switching allowances on both outbound lumber and inbound logs, and it was obvious that we could not hope to secure any business outbound from this mill unless we could arrange satisfactory switching arrangements not to conflict with the mill's own switching arrangements, or
515 make a similar allowance to that afforded the mill by the Missouri Pacific Railway. We accordingly filed an application with the Interstate Commerce *Commerce* under date of August 26, 1925, seeking authority under the terms of Paragraph 13, Section 15, of the Act to Regulate Commerce, and under the Commission's Fourth Supplemental Order in the Tap Line Case, I. & S. Docket 11, of January 29, 1915, to publish an allowance of $3.00 per car on shipments of lumber and other forest products, carloads, switched by the locomotives of the Fisher-Hurd Lumber Company from their mills situated in the Ferriday Yard Limits to the connection of their spur track with the line of the Louisiana & Arkansas Railway, a distance of approximately 1,950 feet; also an allowance of $2.00 per car on shipments of rough material, including logs, carloads, moving from points on the Louisiana and Arkansas Railway to the mill of the Fisher Hurd Lumber Company where such cars were handled by the locomotive of the Fisher-Hurd Lumber Company (R. 4953).

In response to this application, the Commission under date of October 6, 1925, Secretary McGinty's file W. C. S.: C. W. P., approved the allowances requested in our letter of August 26, 1925, and these allowances were accordingly published effective November 20, 1925, as per Item Number 86 of Supplement Number 2 to L. & A. Freight Tariff I. C. C. 1267.

Under date of November 8, 1928, the Commission was asked for authority to change this publication to provide for the allowances to be made to the Fisher Lumber Corporation, which concern had succeeded the Fisher-Hurd Lumber Company in the latter part of 1928. In addition authority was sought to make the outbound allowance to apply on wood ashes switched from the plant to the Fisher Lumber Corporation to our connection. Authority was furnished under date of November 12, 1928, Secretary McGinty's file W. C. S.: L. J. P. F., both with respect to the allowance on ashes and to cover the change from the Fisher-Hurd Lumber Company to the Fisher Lumber Corporation (R. 4954).

516 Effective November 1, 1928, it appears that the Missouri Pacific Railroad reduced the allowance on inbound shipments of logs and rough materials from $2.00 per car to $1.00 per car, and in order to keep the allowances on a parity, we accordingly asked the Commission under date of November 16, 1928, for authority to make a similar reduction in our own allowances. Secretary McGinty's reply, dated November 19, 1928, File W. C. S.: L. J. P. F., indicated

that inasmuch as the allowance which we desired to publish was a less amount per car than that specifically authorized theretofore, we were at liberty to make the reduction without further action by the Commission unless such publication were attacked by formal complaint (R. 4954).

Publication of the reduced allowance was made effective December 20, 1928, as per Item 125-B of Supplement Number 6, to L. & A. Local Freight Tariff I. C. C. 1297.

These allowances, namely, three dollars per car on outbound shipments of lumber and $1.00 per car on inbound shipments of logs, and articles grouped with these allowances have continued in effect and are now published in the current issue of Freight Tariff 1789 series (R. 4954).

That briefly outlines the history of this publication.

517 C. G. LUNDAY, Vice-President, Louisiana & Arkansas Railroad, was called as a witness, being duly sworn, testified as follows:

I was in charge of operations when the Fisher mill was installed and I am familiar with the layout (R. 4959).

Q. What would you say as to the ability of the railroad as compared with the lumber company to switch this plant economically—which can do it the most economically?

A. The mill can do it much more economically. They pay less wages; the fuel is less. They can go in when it is convenient for themselves and everybody else when we have to go in at a certain time. The lay out of this mill is reached by the L. & A. through a cross over about six hundred feet long. This cross over track is used for interchange purposes. If we undertook to switch the loading rack or the loading sheds with our own power, we would have to head in through this cross over, and if we had very many cars, pull down far enough to foul the frog on the saw mill tracks, which is used for loading and unloading logs, which would mean a delay to both of us. Taking it all in all, it is much more economical to have the mill bring the cars out on this cross over (R. 4960).

518 Q. Was that arrangement made under the assumption it was your obligation as a common carrier to go in that plant and perform that spotting?

A. I have been railroading forty-six years and have never found a place where we didn't have to spot the car at the chalk line at both ends.

Q. That was your responsibility——

A. It was our responsibility to place the car where it was unloaded or loaded.

Q. And that independently of whether or not you could place the car on account of the weight of the rail——

A. I don't know that the question of physically being able to do it ever came up. Of course, we couldn't get in there and spot it if we had track we couldn't get over (R. 4962-3).

519 C. A. TALLEY, Assistant Traffic Manager of the Shell Petroleum Corporation, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 4967):

DIRECT EXAMINATION

I have been with the Shell and affiliated companies for sixteen years. I was formerly Manager of the New Orleans Refining Company for nine years, which operated and owned the refinery at Norco, Louisiana.

(Mr. White, Attorney for Louisiana & Arkansas Ry. Co.):

We receive no allowances at the Norco plant.

The Norco plant is located between the Y. & M. V. and the L. & A. Railroads. The L. & A. comes in from the east side of our plant and the Y. & M. V. from the west side, or the river side of our plant. Our plant is entirely surrounded by tracks.

Our export unloading tracks—export unloading tracks are the tracks where our export petroleum products are unloaded—are on the east or L. & A. side. Our export unloading tracks for fuel oil and refined products, as well as all other grades of petroleum products, are located on the north side of our plant. On the left side we have additional tracks where we unload crude oil and load certain grades of petroleum products.

Within our plant we have different tracks to several various parts of the plant. One plant in particular is our cracking plant, or the Dubbs plant, where we crack fuel and gas oil and other residues under high pressure to get the so-called anti-knock gasoline. The residues are reduced to coke which have to be moved from the Dubbs plant when the towers are cleaned ever so often, that is, the coke is transferred from this plant to our yard to be loaded on cars.

520 We own our coke cars which are similar to hopper bottom cars of standard gauge but smaller. These cars are operated by a small gasoline engine and we handle three or four cars at a time.

In addition to the gasoline engine we have a small steam engine, oil burner, which is used strictly for intra-plant switching. This latter engine handles asphalt, which service the railroads would not perform unless we paid them for what is known as intra-plant switching. The asphalt is handled with our own flat cars, that is, replace one hundred steel drums of fifty gallons each, on a flat car, and run the car alongside of our asphalt spouts from the asphalt tanks from which the drums are filled with asphalt which has been tested and passed certain specifications. The temperature of the asphalt is from 225 to 300 degrees. The asphalt cannot be shipped immediately but has to be cooled and the time depends upon the

weather. In summer time it takes much longer for cooling than it does in the winter time. The loaded cars are switched out in the yard and held there until the asphalt cools to normal temperature. The drums of asphalt are transferred to box cars which have been placed alongside the flat cars and are then ready for shipment of that particular grade. This operation is strictly intra-plant switching, moving loads within our plant, for which the railroads under the tariff would make a charge.

521 Now, all other switching in the way of placing the empty cars, either tank cars, our own private equipment, or railroad box cars or coal cars, they perform that service in the way of spotting the cars at the loading racks or coke pile or any place where we are loading; they perform all the switching in the way of bringing empties, removing loads, or placing the loads on our inbound shipments and removing empties (R. 4969).

When I say they, I refer to the Y. & M. V. or the L. & A., whichever one handles the line haul traffic (R. 4969).

A blueprint descriptive of the industrial plant of the Shell Petroleum Corporation at Norco, Louisiana, was received in evidence and marked "Exhibit A-23, Witness Talley."

A. I would like to make one further statement on direct. The entire tracks owned by Shell in our plant at Norco, all standard gauge, is 21,500 feet, or slightly more than four miles of track (4969).

522 Our export unloading tracks are connected from the north and south ends by the L. & A., and from the south end by the Y. & M. V., so that either one of these carriers can serve our export unloading track where all tank car shipments are unloaded. Our import shipments, if any, would come from the river through pipe lines from boats. We do not get any import oil by tank cars. Our export oil comes from the mid-continent field, Arkansas, Texas, and Oklahoma, in tank cars and is unloaded into our cargo tanks until we have assembled the cargo for export shipments.

The north side of our plant is connected with the east side by the L. & A. and the west side by the Y. & M. V., so that either one of the railroads can switch our tracks on that side. In addition, we have another track which is west of the main line of the Y. & M. V., which can be switched from the north or south end of the track, but is only reached by the Y. & M. V. (p. 4970).

At the three locations above mentioned the power of either the L. & A. or the Y. & M. V. goes in and upon the industrial tracks, performs the entire switching, that is, the carriers spot the cars where they are actually unloaded, if it happens to be oil, and after we have unloaded them the carriers are notified in the usual procedure and the empties are pulled away from the plant. This operation applies to export shipments. In the operation of our own cars, tank cars or box cars for asphalt, clean cars for refined oil products or what we call dirty cars for fuel oil, are classified and

523 switched into our plant on the particular track that we designate, and after the cars have been loaded, sealed, and bills of

lading have been issued, the railroads then switch these cars to our yard from where they are picked up by the same engine or some other engine.

At the time of this hearing it was not necessary for the railroads to assign a switch engine to this plant to perform the interchange switching. Up until about three years ago when we were doing a heavy export business both the Y. & M. V. and the L. & A. would keep an engine at our plant to perform the switching. They would switch all day and sometimes up into the night, keep an extra engine in there.

The L. & A. northbound local train gets into our plant around ten to ten-thirty in the morning and performs whatever switching is necessary, pull out loads, place empties, whatever is necessary. The L. & A. southbound local usually gets into the plant around two-thirty to three o'clock in the afternoon and picks up the cars that have been loaded during the day.

The Y. & M. V. have an engine that ties up at Goodhope. That engine goes to work about eight o'clock in the morning and performs switching at our plant and at Goodhope which is just adjoining.

At the time the carriers had an engine assigned to this plant we worked out a schedule which would be advantageous to the carriers and the industry. We tried to have regular hours for switching so that the carriers would not have to be on duty any unusual length of time. The switching was performed at the convenience of both the carrier and the industry.

When the liquid that finally becomes asphalt which is moved from one part of our plant to another, and is subsequently loaded on becoming cool and ready for outbound shipping, either
524 the L. & A. or the Y. & M. V. comes in and gets the cars from the loading spot. We have in our plant certain tracks designated as asphalt loading tracks for box cars. We will order cars from one of the railroads and tell them to spot the empties, as many as we need, one or two or half a dozen, as the case may be. Then we will load the cars, and after they are loaded a bill of lading is issued on them and the cars are switched out from the track by the same operation as the loaded cars.

Our own power is used exclusively for what we designate as intra-plant service—movement from a point within the industry to another point within the industry.

The total outbound loads at our Norco plant for the year 1931, including all products, was 11,241 cars. Taking 311 actual shipping days, excluding Sundays and legal holidays, it averaged 36.5 cars per day. That amount of cars would not require a switch engine continuously. In former years when we had two engines assigned to our plant, our export shipments would run about 25,000 to 30,000 cars yearly. Other shipments such as refinery products in and outbound, and domestic shipments increase the amount of switching,

and it required standby service. The railroads found it more economical to keep an engine there during the busy time, but when shipments would fall off for a week or two the engines would be removed until they were needed again.

There is no subsequent shifting from the three general loading locations previously mentioned to other locations merely to get the car in a position accessible for loading or unloading, except in the movement of empty tank cars. Under the switching regulations for empty cars it may be that a car is set in on the track and
525 the inspection shows that car is not suitable for loading. It may have a bad valve or has to be repaired. That car would be classified as a bad order car, and would be switched to our repair track to be repaired and subsequently sent back for loading. This work is performed by the railroads. We could not classify that as intra-plant switching (p. 4973) that is service the carriers should perform and do perform under the tariff regulation. That is because the railroads put the cars in without inspecting them. That is private equipment and they usually leave that up to the owner to inspect the cars. We can't always tell from the outside appearance of a tank car whether it is suitable for loading. Under the regulations of the Bureau of Explosives a leaking car cannot be loaded. The same procedure applies to railroad equipment.

We classify the cars—our tank cars are stencilled, whether dirty or clean—and our yard master gives to the railroad a list of cars—empty cars he wants switched into the plant for loading—we furnish the individual numbers to the agent. The cars are then switched out by the train crews on certain storage tracks or hold tracks. The hold or storage tracks are outside the plant. Both railroads have storage yards adjacent to our plant and our surplus tank car equipment is held outside our property. These cars are handled as ordered by us (p. 4974). We give the railroads a list designating the cars by number and showing what tracks to spot them on. The railroads arrange the cars as most advantageous to them before bringing them into the plant.

At the present time all our inbound loads for export are of the same grade—what is known as casing head or natural gasoline, and we order the cars in and spotted on particular tracks for unloading and removed when empty.

526 Whether or not inbound cars are first set out by the railroad in the hold track or storage track and later ordered in by the plant depends entirely on the condition of the yard. At the present time we are only getting a few cars daily and there is sufficient room to place those cars on one of the unloading tracks instead of placing them out in the railroad yards and performing extra switching service. The railroad agent, while the train is in the yard, usually phones in and says, "We have ten or fifteen cars; do you want them placed on your unloading tracks?" We will say, "Yes." We give the agent instructions and those cars then are set on one of the tracks,

either number one, two, or three. This is done by telephone and saves the expense and delay of setting them out in the yard and then later switching them to the unloading track (p. 4975). If we get a great number of cars in one day, like in former years, and the tracks would be full, the railroad would set those out on some of their hold tracks, either on their property or our property. When we would call for a switch on a particular track, they would bring these cars in when we made room for them.

Whether or not the service rendered by the railroads, that is, the L. & A. and the Illinois Central, in spotting the cars at the respective locations for loading and unloading, interferes in any way with industrial operations or intra-plant switching, so far as the export tracks are concerned, it does not interfere. When we finish unloading a string of cars, whether it is five or ten or thirty, we will have those cars switched out and more loads put in. The unloading crew would only be idle just a short time. They would be connecting up usually on other cars, and there wouldn't be any real delay in switching, but inside our plant where we are loading and unloading

527 other grades and commodities like asphalt and fuel oil and gasoline, those tracks can be switched only at certain times and we have a working schedule for switching at certain times of the day, and we try to make our loading convenient to that time. There are exceptions to all rules. At times their trains may be late and it is necessary to switch at some unusual time. In that case, of course, there would be a temporary delay on those particular tracks (p. 4976).

So far as the export oil is concerned, that is entirely separate and distinct from the refinery. We might be doing big business at our refinery in the way of in and outbound domestic loads, and wouldn't get a single car during the month for export. The next month maybe we would sell a cargo or two cargoes of refined products, and there would be a heavy movement of cars into the export traffic, so you might classify them as two distinct industries.

528 Q. Would you say that the entrances in and upon your plant tracks by the railroad power of the L. & A. and the Illinois Central are under circumstances that might create a fire hazard in any respect?

A. Yes, sir; that is certainly true around any refinery and we have certain regulations we require the railroads to observe. We have markers that an engine cannot go beyond a certain point, and to pull out a car from that point, they must come in with a string of cars. We will not permit an engine to pass our loading rack where they are liable to drop fire out and cause explosions. You take around certain parts of the refinery there is always more or less hazard. That is true around any plant, not only petroleum but other commodities (R. 4977).

Q. Now, is that requirement you have described calculated to lessen or prevent the fire hazard; does that require the railroad to

perform any more service than they would otherwise perform (4977)?

A. No, sir; it does not, Mr. Hagerty. If you will take a load at this particular track here, that is, the north side——

Mr. HAGERTY. The witness is speaking from exhibit A–23.

The WITNESS. As an illustration, if the Y. & M. V. engine were placing tank cars on one of our loading racks at the north side of the plant, they would come in from the west side of our plant and the engine would push the string of cars ahead of it and the engine would come in contact with the loading spouts, or, rather, would not pass a given point designated by markers in the yard.

Director BARTEL. In other words, you push in instead of pulling in?

The WITNESS. Yes, sir; that is correct. We guard against all fire hazards as much as possible (4978).

529 The loading track on the north side of the plant where the power of the connecting carriers is required to push the car instead of pulling it in to prevent passing the loading spouts is identified on the blue print, exhibit A–23, by the letter A.

The loading spouts are all along the tracks. One of these tracks is long enough to actually form twenty-five to thirty cars, so that wherever a care is spotted, we have the necessary loading spouts to load the car regardless of the point at which it is placed on that particular track. We always have sufficient cars of our own on these tracks to permit the carriers to perform the necessary switching without passing the marker in the yard. There are certain tracks within the yard where engines are free to pass to and fro (p. 4978).

There are always a certain amount of fumes that are liable to be escaping while we are loading cars. These markers are only put out while we are loading. In other words, we have a marker there, cars are being loaded, keep fire away.

We have a yard master that supervises or directs the switching service on our plant tracks, and so far as the connecting railroads are concerned, they take their instructions from our yard master as to the placing of empty cars and the movement of the loaded cars. Our yard master determines when and where the signals against fire are to be placed (p. 4979).

530 CELOTEX COMPANY

(Hearing held May 9, 1932, at New Orleans, La.)

W. T. BOWKER, Plant Auditor, Celotex Company, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 4980):

DIRECT EXAMINATION

I am the plant auditor of the Celotex Company. I have had charge of the plant accounts and cost accounts of this company for one year, and prior to that I was Assistant to the Comptroller at Chicago, where I had general supervision of the accounts of this

company. Prior to that I was special investigator for the American Appraisal Company, and have installed cost accounting systems in a large number of properties in the United States. The Celotex Company is the only one where I have installed accounting systems in the State of Louisiana, but I have made numerous suggestions which were adopted in the accounting offices of other companies in Louisiana.

I have prepared some figures which show the cost to the Celotex Company of handling the inbound and outbound freight movements at their plant since November 1930. Prior to that date the expense of handling the cars was not shown separately in the cost account, but in November 1930 we installed a new cost accounting system, the cost of the locomotive used principally in switching and the cost of the gasoline tractor used in yard switching was segregated, and since that time a separate account has been kept for the two services.

The cost of operating the locomotive from November 1930 to April 30, 1932, was $14,182.22. The cost of operating the tractor for the same period was $6,254.96, or a total cost to the Celotex Company of $20,437.18. These costs include the wages of the engine crews, tractor operator, fuel oil, lubricants, and other supplies necessary
531 for the operation of the machines, the necessary maintenance and repair, but does not include any allowance for depreciation. Depreciation for the entire plant is spread on the cost of products for the month, and while it would be easy to determine the amount of depreciation charged to this equipment, it is not so charged, and for that reason it is not shown here (p. 4981). During the period above mentioned, except for the last two months, there was filed switching claims amounting to $11,951. The amount allowed for claims was $2,231.22 less than the cost of operating the locomotive, and $8,486.18 less than the cost of operating the locomotive and tractor. The inbound movement of cars for the same period as reported to me by the traffic department was 8,114 cars. Of this total, 5,456 cars were bagasse cars moving entirely within the state; 2,325 cars were carloads of what we call filler or waste news print, most of which moved from the docks in New Orleans; and 333 cars were cars of different materials, such as rosin, size, chemicals, arsenic, and so forth.

The outbound movements were 4,342 cars, of which 4,151 cars were our products and 191 cars were of miscellaneous materials of which I have no exact record. The total car movement inbound and outbound was 12,456 cars (p. 4982).

CROSS EXAMINATION

The service performed by the locomotive in incurring the costs above referred to, according to my understanding, was that of placing the cars on an interchange track outside the plant, and spotting the cars at the various loading places within the plant, and moving the loaded cars out to the delivery track (p. 4982).

Most of our plant service is performed by the tractor. We have quite a movement of broken materials and waste materials from one end of the plant to the other, and most of that service
532 is performed by the tractor; in fact, I think for the past two months we have performed all that service with the tractor.

To the extent that the locomotive referred to was used in service other than the interchange service between the carrier and the plant, and the cost figures include that service.

The locomotive was bought from the Southern Pacific in 1926 or 1927 for $7,500. It was a second hand locomotive at that time, and was in a very bad condition when we bought it, and we had to spend considerable to put it in condition. We have had to spend considerable to keep it in condition. I am not familiar with the class or type, but it is an ordinary switch engine, about 65,000 pounds tractive power (p. 4983).

533 ROSWELL P. PEARCE, Assistant to the General Superintendent, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 4983):

DIRECT EXAMINATION

I am Assistant to the General Superintendent, who has charge of the manufacture of celotex, located at Marrero.

The manufacturing buildings in the plant are all to the south of the tracks of the Southern Pacific and the T. & P. Our bagassee yards in which we store our reserve supply of bagasse are on the opposite side of the railroad tracks between the tracks and the river. There are six tracks in the bagasse yards, all converging into the T. & P. interchange track, and there is a cross over from the T. & P. to the S. P. identified on exhibit A-24 by the letter A.

A blue print of the plant was received in evidence and marked "Exhibit A-24, Witness—Pearce." The faint lines on the map are proposed tracks. The plant is divided into two sections, the plant numbered 1 is the old mill and on the south side is located the other mill, marked plant number 2. Our number 1 track leading from the Southern Pacific tracks is at a point identified on the blue print by the letter B at the west end of the plant which serves our new yard or plant number 2. The interchange point with the Southern Pacific is shown by the letter C on the map. Plant tracks 20 and 21 connect with the lead-in track from the point designated by the letter C and serve the north side of plant, number 1. There is a little warehouse track, number 22, which also connects with the lead-in track from the point designated by the letter C. At the east end of the plant, at a point designated by the letter D, is an-
534 other lead-in track from the Southern Pacific main line serving the south side of plant number 2. Just east of the point designated by the letter D is a cross over, between the tracks of

the Southern Pacific and the T. & P., connecting a track south of the Southern Pacific known as Powell Siding (p. 4985).

The lead-in track from the point designated by the letter B is not used by the industry, but is for the railroad's convenience only. Track 25 connects with the lead-in track from the point of interchange designated by the letter C serving our plant yard, which in turn is split into tracks 26 and 27 serving our unloading bagasse platform, on either side. These latter tracks extend to practically the west end of the property. Connecting with track 25 there is a spur, known as track 24, serving our paper warehouses. This service requires a switch back movement from this paper track, or track 24, to the south side of the paper warehouse which is a dead end track. This warehouse is designated on the map by "1927 Celotex Warehouse." Then, coming into the yard again, from point C, we come over track 20, which runs along the north side of the plant and goes back to a point to serve our pith plant, which is designated as "Pith plant" on the drawing. From track 30 which connects with the lead-in track from point of interchange, designated by the letter C, there are two tracks, numbers 35 and 36, which serve our finishing building, number 2, where we load celotex direct from this building. These latter tracks are dead end tracks. Track 31 connects with track 30 and extends along the south side of "1930 Celotex Warehouse," where we do a great deal of loading. About eight cars can be spotted at this warehouse. This latter track dead ends at this warehouse (p. 4987).

Crossing over from the Southern Pacific side to the T. & P. side, the cross over crosses the two Southern Pacific main line
535 tracks and connects with the T. & P. interchange track at a point designated on the map by the symbols X. From this interchange track there are six tracks which serve the bagasse unloading spots, which are in three groups of two each, extending westward into the bagasse field and designated by letters A, B, C, D, E, F, and G.

The tracks serving the bagasse unloading spots or piles are standard, but of light weight rail, and the bagasse is unloaded from the railroad cars onto little cars which are drawn by mules to the point of unloading. The bagasse is unloaded by the use of a Brown hoist (p. 4987).

Track 3 in the bagasse yard extends about 250 feet further west to almost the edge of the west property line. It was built at a time when we stored bagasse in this loop, known as bagasse storage field, but is not used now.

When a carload or more of bagasse comes in from the country over the Southern Pacific to be stored in the bagasse storage yard, that carrier places the car either on its interchange track, or the extension of its interchange track, known as Powell siding, between the points B and C shown on the map, exhibit A-24. The cars loaded with bagasse enter from the west and are backed in by the carrier

for its own convenience on its interchange track. Our locomotive picks up the cars loaded with bagasse from the interchange track, and crosses over the T. & P. tracks into our bagasse field, and places them on one of the six tracks previously referred to at a point where we might want them at that particular time.

We have 21 gondola cars which we bought from the T. & P. Railroad Company suitable for our work. With respect to the operation of bagasse to be used for immediate consumption in the mill,
536 it is necessary to move these cars with our engine from the mill side—they are usually on this side if we are not using them—take them over empty, across the interchange tracks into the bagasse field, and when they are loaded the engine brings them back, and places them in our yard, and pushes them back to the bagasse unloading carrier. This operation applies to dry bagasse from the storage yard to the mill (p. 4989).

Bagasse coming in from the country is brought in by the Southern Pacific on their main line, and placed onto the interchange track at the point designated on the map by the letter B. Our engine or our tractor, when we are ready, takes the cars down to the location designated by the letter C, and thence into the bagasse unloading shed located on tracks 26 and 27. When these cars are unloaded our engine takes them out to the interchange track where they are picked up by the Southern Pacific.

The movement of the cars, as just described, if not performed by the plant engine would have to be performed by the line haul carriers.

In the course of our intra-plant operations between plants numbers 1 and 2 on the south side, and our bagasse plant located on the north side of the carriers' main lines, it is necessary, at times, to load trimmings from the boards on our small cars at finishing building, number 2, or finishing building, number 1, or possibily at other locations along track 30, and move these cars with plant power across the interchange tracks of the line haul carriers at point F into our north or bagasse yard where this material is unloaded and temporarily stored. Later this material is reloaded onto the same cars and brought back over the cross over to the Southern Pacific interchange track and into our mill for unloading at the bagasse unloading carrier (p. 4991).

537 The Southern Pacific interchange track is located on the carrier's property about midway the plant. It is owned by the carrier, but the construction of it was paid for by the Celotex Company.

North of, and parallel to, the Southern Pacific main line are the main tracks of the T. & P. On the north of and adjacent to these latter tracks is the T. & P.'s interchange track extending almost the entire length of the plant property, indicated on the map (exhibit A-24) by the letter X (p. 4992).

With respect to traffic coming in over the Southern Pacific assigned to the bagasse plant, this carrier has no access to the north side. In other words, neither carrier can cross the tracks of the other to switch either side of our plant property. We have to perform this service under our supervision. The motive power of the Celotex Company has the right to operate, to a certain extent, over both the interchange tracks of the Southern Pacific and those of the T. & P. It is my understanding that there is some arrangement between our company and the two carriers to permit our power to cross the main lines of the railroads in getting from the north side of our property to the south side, and vice versa.

538 We employ a standard switching crew of all examined men, examined by the carriers. Nobody is on that engine crew that is not approved by the carriers. It consists of an engine foreman in charge of the crew, a fireman and engineer on the engine, and two switchmen in addition, making five in all in the crew. The engine never moves without five men (4994).

Mr. HAGERTY. I will ask one question now. Is there an agreed point where the Celotex Company will take delivery of inbound traffic from the Southern Pacific and Texas Pacific?

The WITNESS. Yes, sir.

Mr. HAGERTY. And what is that agreed point?

The WITNESS. As far as possible, it is about the center of the interchange track, for the S. P., and it is a point right here on the T. P. (4995).

Mr. HAGERTY. Just mark it agreed point of delivery. Draw a line from it up that way and mark it agreed point of delivery (4995).

Q. Mark it Southern Pacific agreed point of delivery and Texas Pacific agreed point of delivery.

A. That is designated so because it is handy for us to get the cars. This is designated so because it is handy for us to get the cars from the cross over.

Q. I take it from that statement you know nothing about any agreement as to where these cars should be picked up or dropped?

A. I have never seen the agreement; no, sir.

Q. That is merely your working arrangement from day to day?

A. That is the working arrangement from day to day (4996).

Sometimes the Southern Pacific will have empty cars on what is known as Powell's siding for prospective loading. They do

539 that for their convenience and they are charged in the next morning at seven o'clock. We have a joint average agreement with the Southern Pacific with respect to computing demurrage.

Mr. HAGERTY. Do you know why it is that the Southern Pacific with its own power does not go beyond the so-called interchange track and do the spotting at the locations accessible for the loading and unloading of your traffic?

The WITNESS. No; I don't.

Mr. HAGERTY. Do you know of any physical conditions of the tracks, from the standpoint of the weight of the rail, or the curvature within the plant which would prevent the Southern Pacific Power from going in upon the tracks and performing the spotting service?

The WITNESS. No; there is no drawback.

Mr. HAGERTY. You do not know why they do not go in there?

The WITNESS. I have my idea, but why they made the arrangement at the beginning, I don't know definitely. There would be a conflict of work. We have so many movements to make along with the movements they could make we would be going right along behind them.

Mr. HAGERTY. You are assistant to the operating superintendent of the plant?

The WITNESS. Yes, sir.

Mr. HAGERTY. Let me ask this as a matter of expert evidence in relation to that particular operation. Would you say it would be practicable, without interfering with the industrial operations,
540 for the power of the Pacific Company or the Texas and Pacific Company to enter in and upon the industrial tracks of the Celotex Company for the purpose of spotting cars at the locations accessible for loading or unloading?

The WITNESS. Would it be practicable for them to do it?

Mr. HAGERTY. Yes.

The WITNESS. It would be practicable.

Mr. HAGERTY. Without interfering with the industrial operations?

The WITNESS. In this way, they probably wouldn't be there at a time that wouldn't interfere with our work.

Mr. HAGERTY. Does your answer mean it would not be practicable without interfering with the industrial operations (4997)?

The WITNESS. Yes.

Mr. HAGERTY. That is the answer?

The WITNESS. I had better say that.

Mr. HAGERTY. And that is the reason you would assign why the Southern Pacific and Texas Pacific motive power does not enter into the plant?

The WITNESS. I imagine that is the real reason.

Q. In other words, you would have at some time three switch engines working in your yard, one T. & P. engine, one Southern Pacific engine, and one Celotex engine?

A. Yes. There would be a conflict, repetition, one right after the other (4998).

541 C. E. DAHLIN, Traffic Manager of the Celotex Company, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5000):

DIRECT EXAMINATION

I am Traffic Manager of the Marrero plant of the Celotex Company. I have held that position since 1920, when the plant started. Previous to that time practically all my time has been in railroad work. I was in the various traffic departments of the Great Northern Railroad in St. Paul. I am familiar with the tariffs filed by certain carriers with the Interstate Commerce Commission providing an allowance of $1.00 per car on certain designated cars to the Celotex Company.

Q. Will you read into the record, please, and designate the I. C. C. numbers of each of the tariffs to which you refer?

A. Morgan's Louisiana, Texas Railroad and Steamship Company, I. C. C. number 4642-B.

Q. What does it say?

A. "Morgan's Louisiana, Texas Railroad and Steamship Company will make an allowance of $1.00 per car to the Celotex Company for services performed in switching carload shipments of freight between loading and unloading tracks of the Celotex Company and track connections with the Morgans, Louisiana, and Texas Railroad & Steamship (fol. A-544) Company at Marrero, Louisiana.

"This allowance includes the movement and placement of a loaded car for unloading and the return of the empty car, or the movement and placement of an empty car for loading and return of same loaded."

This tariff is effective as of December 23rd, 1936, on
542 interstate traffic and November 20, 1926, on intrastate traffic.

The Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, under their I. C. C. number 10, item 40, carries the following:

"Allowances for switching at Marrero, Louisiana.

"Paragraph A: The Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans will pay to the Celotex Company an allowance of 100 cents per car as compensation for services performed in switching carload shipments of freight between loading and unloading tracks of the Celotex Company and track connection with the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans at Marrero, Louisiana.

"Paragraph B: The allowance provided for in paragraph A includes the movement and placement of a loaded car for unloading and the return of the empty car, or the movement and placement of an empty car for loading and the return of the load.

"Paragraph C: Such compensation will be in lieu of their (fol. A-545) relieving the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans of performing such service as provided by law and/or in the tariffs lawfully on file with the Interstate Commerce Commission, or the Louisiana Public Service Commission requiring the placement for loading or unloading and the handling between the tracks of the Celotex Company and the connection with the track

of the Texas-Pacific-Missouri Pacific Terminal Railroad of New Orleans."

That tariff was effective June 10, 1931, and is a re-issue of a previous tariff which I haven't got, but I am of the impression that the rate went into effect at the same time as the Southern Pacific rate did.

543 I am familiar with the manner in which the demurrage account is set up with the Texas Pacific-Missouri Pacific Terminal. We have an average agreement with both lines, that is, the Terminal line and the Southern Pacific. Shipments could come in off the T. & P. for delivery to the terminal.

Item 20 in Texas Pacific-Missouri Pacific Terminal Tariff I. C. C. number 10, reads as follows:

"All cars switched from and to industries, switches, tracks, warehouses and wharves served by this (fol. A-547) carrier will be subject to the established demurrage and storage rules and charges and rules for handling cotton and cotton linters on interstate traffic as published in W. P. Emerson's Freight Tariff. 4-J, I. C. C. Number 158, Texas Pacific-Missouri Pacific Railroad of New Orleans tariff number 332, Supplements there to or successive issues thereof."

As to whether we have one average agreement with the Terminal or whether we have separate agreements with the Missouri Pacific and the T. & P., we may have all three of them. I have a faint idea we have. I am positive we have one with the Terminal company (p. 5003).

I rather think, but I am not positive, that on traffic coming in by the Missouri Pacific in road haul service, delivered to the Terminal company, and on traffic coming in over the T. & P. delivered to the terminal for delivery at our plant, all of those cars are taken into account under one average agreement which we have with the Terminal company. It is within my jurisdiction as Traffic Manager, Marrero plant, to see that the terms of the tariffs are complied with, and to compile information for the railroads with respect to the allowance paid our company. We bill the railroads. The allowance

544 covers cars switched, for example, by the Southern Pacific for some other company, that is, cars handled by the Southern Pacific as a switching carrier. The allowance also includes cars switched by the T. & P. for some other railroad. In other words, the $1.00 allowance is made both on line haul traffic and switching traffic.

At this point witness identifies a copy of a contract dated September 25, 1926, between Morgans, Louisiana, and Texas Railroad and Steamship Company, now the T. & N. O., and the Celotex Company, a copy of which contract will be later furnished as an exhibit of record.

It was also stipulated that an agreement of September 26, 1926, between the M. L. & T. and the Celotex Company with reference to a change of tracks and the extension of tracks at the time the Celo-

tex plant was enlarged, and also in reference to the manner in which the costs were to be taken care of and the use to be made of the changed tracks, will be furnished by the Celotex Company as a matter of record.

The $1.00 allowance paid the Celotex Company covers the ordinary spotting of empties for loading and loads for unloading, and the return of the empties or the loads to the interchange tracks. That is between the interchange track and the various locations for loading and unloading throughout the plant. This allowance applies to shipments over the T. & P. destined to locations on the south side of the plant reached only by the Southern Pacific. This allowance also applies to shipments over the Southern Pacific destined to our bagasse plant, on the north side, which requires a cross-over over the T. & P. In other words, the carriers make the Celotex Company an allowance regardless of where in the plant the cars are going. All the carrier does is spot the car on the interchange (p. 5006).

The Celotex Company takes delivery on the interchange tracks instead of having the carriers enter upon the tracks and do the spotting as a matter of economy for all concerned—economy to the Celotex Company.

545 It is a part of the switching allowance agreement of September 25, 1926, that we will accept the cars on the interchange and perform the balance of the service for the figure of $1.00—that is, we will finish what they would do if they hadn't put the cars on the interchange track (p. 5008). The contract provides that we will take delivery and possession of the traffic on the interchange track. If they had not given us that allowance, we would not have made the agreement to accept the cars at that point. The Celotex Company assumes all responsibility and liability for the property in the cars after we have taken possession of the cars on the interchange tracks under the terms of the contract.

If we did not accept delivery of the cars on the interchange track the carriers would have to perform the service that we perform within the plant (p. 5009).

Q. In your opinion, as a traffic manager, would it be practicable for three separate railroads to enter those tracks with their own power, on the plant's tracks for the purpose of placing the cars in position accessible for loading or unloading?

The WITNESS. It would be impractical for three people to attempt to do what one person could do much more economically for all concerned (5010).

546 C. E. DAHLIN, recalled as a witness, being previously sworn, testified as follows:

Direct examination by Mr. WEBB:

Q. Mr. Dahlin, in your examination yesterday, the examining director asked you certain questions with respect to demurrage and

certain average agreements with carriers operating at Marrero, Louisiana. Have you had an opportunity to investigate that matter further?

A. Yes.

Q. Will you please tell the examiner what you have discovered?

A. We have an average agreement with the T. & N. O. Railroad, The Texas Pacific, the Missouri Pacific, and the Texas-Pacific-Missouri Pacific Terminal Company.

Q. These average agreements are made in accordance with the provisions of certain tariffs, are they not, or a tariff?

A. They are made in accordance with B. T. Jones' tariff Number 4.

Q. What is the I. C. C. Number?

A. I. C. C. Number 2400.

Q. Which tariff contains the usual provisions for average agreement?

A. Yes, sir.

Q. And these average agreements are made in accordance therewith?

A. Yes, sir.

Mr. WEBB. I think that is all.

Director BARTEL. Which average agreement do you apply on traffic delivered to your company by the Texas Pacific-Missouri Pacific Terminal?

The WITNESS. We don't do the applying. The carriers apply them and we check the bills.

547 Director BARTEL. Which bills do you check?

The WITNESS. Whoever happens to present it. We have had bills from all of them.

Director BARTEL. On traffic coming in over the Missouri Pacific and delivered to you over the terminal, what average agreement would it be?

The WITNESS. That is a detail I never followed out.

Director BARTEL. How would you check your bills unless you know what carrier applies the demurrage?

The WITNESS. Check it with our yard check.

Director BARTEL. How could you determine from your yard records whether you are going to assess it to the T. P. average agreement or Missouri Pacific average agreement, or the terminal average agreement?

The WITNESS. I can't see what interest that is in clearing the bill. We know the day the car came in.

Director BARTEL. Suppose a shipment comes in over the Missouri Pacific and certain demurrage accrues, and suppose another shipment comes in over the Texas Pacific on which you had certain credits; would you offset the debits on one road against the credits of the other?

The WITNESS. No.

Director BARTEL. How do you know you don't if you don't know which average agreement applies?

The WITNESS. If we get a demurrage statement from one carrier showing certain cars, and that demurrage has accrued, and their demurrage statements show the demurrage, we check that against our records. In that way we allocate them.

Director BARTEL. Suppose a shipment comes in over the Missouri Pacific and is delivered to your plant by the terminal, under which agreement would the demurrage apply, under your average agreement with the terminal, or under your average agreement with the Missouri Pacific?

548 The WITNESS. I don't know how I can explain it to you any differently than I have explained it. We allocate the cars from our own records according to the way the demurrage bills are presented. I think you will find then that all demurrage bills carry all cars you have. An average agreement demurrage statement shows all cars you have received.

Director BARTEL. From all carriers?

The WITNESS. No; each individual carrier makes its own statement and shows to us the credits due us.

Director BARTEL. That is what I am trying to find out. On a shipment coming to you over the Missouri Pacific, are you under the average agreement with the Missouri Pacific or the average agreement with the terminal; which one do you apply?

The WITNESS. We don't apply any. We take the statements they present.

Director BARTEL. I think we ought to know which average agreement you are operating under. It is quite important, it seems to me.

Mr. HAGERTY. May we have the matter placed in a simple statement—rather, the bills of a few of the carriers where the demurrage was billed? Have you got those bills?

The WITNESS. I have plenty of them of the T. & N. O. I don't recall about the others, because the business has been small.

Mr. HAGERTY. Have you any?

The WITNESS. I might have some back some years.

Director BARTEL. Who presents the demurrage bills to you, the individual carriers or the terminal?

The WITNESS. I think that is more or less a detail I have not watched very carefully, but I am more or less under the impression we have had demurrage bills from all of them.

549 By Mr. WEBB:

Q. Isn't it a fact, Mr. Dahlin, that the majority of the business which is done at the mill and has been done at the mill over the period of the last two years is virtually off the lines of the T. & N. O. and Southern Pacific Company?

A. Yes.

Q. And that there would have been but very little opportunity during that period to have had any demurrage accruals off, for instance, the T. & P.?

A. Very little.

Q. Now, if one of these carriers—supposing it had a bill for demurrage on the average agreement, showing a debit, would it not send its individual bill to your office for check and payment?

A. Yes.

Q. And that is the amount of money you must check against the tariff and pay as rendered by that company?

A. That is correct.

Q. Mr. Dahlin, are you in a general way familiar with the point at which the Missouri Pacific-Texas Pacific Terminal Railroad starts and ends on passing through Marrero on the west or south side of the river?

A. In a general way, yes.

Q. Isn't it a fact from your own knowledge that the Missouri Pacific and the Texas Pacific as individual companies would not render a bill against you for demurrage which would accrue at your plant at Marrero?

The WITNESS. Read that question, will you?

(The reporter read the question.)

550 A. No, I think we have had bills from both the T. P. and the Missouri Pacific, and the Texas Pacific-Missouri Pacific Terminal.

Q. For delays at Marrero or delays at Algiers?

A. For delays at Marrero.

Q. How do you know whether the T. P. as one carrier, the Missouri Pacific as another carrier, and the Terminal Company as a third carrier is properly entitled to the demurrage for delays at Marrero? That is the question the examiner wants you to answer. Is that right?

Director BARTEL. Yes.

Q. If you don't know, tell the examiner. If you do know, tell him what you do know about it.

A. On account of the small amount of business done with these carriers, we have never handled the correctness of their demurrage bills, other than to satisfy ourselves that the particular car or cars were delayed, and we have made no attempt to figure claims that may be due on that demurrage bill——

Q. On account of the small amount involved, is that correct?

A. If you will let me finish, please. As the expenses involved to keep the record would be greater than the amount of the demurrage bills.

Director BARTEL. Anything further?

Mr. WEBB. Nothing more.

Director BARTEL. That is all.

551 (Hearing held May 18, 1932, at Galveston, Texas.)

WILLIAM N. WEBB, General Traffic Manager, Celotex Company, Chicago, Illinois, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5954):

DIRECT EXAMINATION

I am general traffic manager of the Celotex Company, located in their general offices at 919 Michigan Ave., Chicago, Illinois.

I wish to supplement the testimony of William T. Bowker and C. E. Dahlin, which was introduced in New Orleans on May 9th and 10th this year, before the presiding director.

By agreement with counsel for the Commission, we offer copies of two contracts, one between the Morgan-Louisiana-Texas Railroad & Steamship Company, and the Celotex Company, dated September 25, 1926, with relation to the switching allowance of $1.00, which was the subject of inquiry.

The contract with respect to switching allowance was received in evidence and marked "exhibit A–104, Witness Webb."

The second contract is one between the same companies, bearing the same date, with respect to the construction, maintenance, et cetera, of certain tracks used for interchange purposes, and was received in evidence and marked "exhibit A–105, Witness Webb."

The testimony of Mr. Bowker referred to certain costs of switching by the locomotive and track owned and operated by the Celotex Company on its property at Marrero, La. I beg to present an exhibit prepared by Mr. Bowker, at my direction, which will outline—on page 1 we find a copy of the invoice for locomotive outfit which was purchased; page 2 the detail of the cost of locomotive operation between November 1, 1930, and April 30, 1932; the
552 additional figures to this are merely the last three sets of figures, that is, depreciation of the engine, the track rental, and railroad maintenance of the interchange tracks of the Morgan's Louisiana and Texas Railroad & Steamship Company and the Texas Pacific-Missouri Pacific Railroad. The third page is an analysis of the car movement from November 1, 1930, to April 30, 1932. These figures merely detail the total which was stated by the witness. The fourth page is the cost of track operation November 1, 1930, to April 30, 1932. This statement also contains merely the detail from which the witness produced his figures.

CROSS-EXAMINATION

The figures representing our costs are for all services performed by our power at our industry, including both the yard and our industrial railroad where we sort the bagasse. The track rental provided for in the contract is interest charged on the value of the service and paid to the two companies named therein. The same is true with respect to the maintenance charge (p. 5956).

553 RUSSELL P. WATKINS, Vice President and General Manager, Texas-New Orleans Railroad Company, was called as a witness, being first duly sworn, testified as follows (Vol. 6, p. 5956):

DIRECT EXAMINATION

I am vice president and general manager of the Texas-New Orleans Railroad Company, in charge of the lines east of Echo in the State of Louisiana. I have had many years of railroad experience and am familiar with the plant track lay out of the Celotex Company at Marrero, La.

This plant started out as a much smaller proposition and at that time was switched by the Morgan's Louisiana and Texas Railroad & Steamship Company. The Texas & New Orleans is now the lessee of and operates those properties.

When this plant was enlarged there was a substantial change in the whole arrangement, not so much in the plant switching as in the general service. An important point in the new arrangement is that it took more space to store the bagasse, which is the residue of sugar cane. They acquired a large tract of land between the Texas & Pacific Railway and the Mississippi River—space enough to store about 50,000 tons of bagasse, and at that time it took an enormous yard for that purpose. The present allowance developed from discussions between Mr. Dahlberg and myself as to how he (Mr. Dahlberg) could get his raw material across from the mill.

A cost study was made to determine what would be a fair allowance. The Southern Pacific made a very careful study of the operating conditions existing immediately before the enlargement of the plant, with respect to the services to be performed for the
554 enlarged plant. In connection with this service, I considered only that material brought into the plant.

In determining the amount of the allowance the actual cost to the industry for performing the switching service as compared with what it would cost the carrier to perform the same service was used. I estimated on the whole that it would cost the industry about $1.00 per car, while the cost to the railroad would probably run as high as $1.50 per car. We prepared a contract which I furnished to the general freight agent to be published in the tariff, fixing the rate at $1.00 per car (p. 5959).

CROSS-EXAMINATION

The T. & N. O. pays the allowance to cover one complete switching of the plant per day, that is, to pull out the empties, bring in the loads, and place them at the places designated for loads within the confines of the plant and upon the industry's track where the industry wants the cars placed for loading or unloading. This $1.00 allowance does not include the bagasse storage territory across the T. & P. track. I had quite an argument with The Celotex people

about that. I told them if they went over on the Texas & Pacific side, it was not our side of the railroad, and we were not required to switch it over there, but if they put the bagasse on our side of the railroad, the question came up as to our obligation. We put the cars on the interchange track, and that is delivery to the industry. We pay them $1.00 per loaded car for cars that move over our railroad, but that compensation is for service that we would perform within the factory site on our rails. The allowance includes every loaded car that comes in over our rails (p. 5960).

555 REDIRECT EXAMINATION

By Mr. TALLICHET:

Q. But, in fixing that figure, you did not include any costs of The Celotex Company for moving it over to the T. & P.?

A. No, sir; I had nothing to do with that; it was not on our railroad. I was considering only the operation that we were called upon to perform.

Q. What operation would that be on bagasse destined for unloading north of the T. & P.?

A. If we were performing the switching within the plant, we would spot those cars for loading at a mill. We did that until this contract was made.

Q. If they wanted them stored north of the Texas & Pacific track, what did you do?

A. We did it until this contract was made; we spotted it on the unloading track every day, those cars of bagasse, and we pulled the empties every day, and we were relieved of that service when they began to do their own switching, they relieved us of unloading it.

Q. At the time you were spotting the cars at the unloading place on your own rails, or on the industry's rails, the bagasse was being stored in the territory north of the T. & P. track?

A. No, sir; they were storing it on their own premises.

(Fol. A–1944.) Q. If I understand your testimony, your $1.00 allowance was a substitute for what you had been doing with your own power.

A. It was to compensate them for performing service to their factory site. We had been performing it and would be relieved of that obligation.

As to whether the last paragraph of the second section, ex-
556 hibit A–104, was predicated upon an agreement between the T. & N. O. and the Celotex Company as to where they would accept delivery of the inbound cars, and where the railroad would accept the outbound cars, I would say that any service beyond that point, after this contract was made, was to be performed by the Celotex Company.

As to why I am paying, at the present time $1.00 to cover some of the service that is performed beyond the point of delivery de-

fined or fixed by contract—"I do not understand that I am paying for that—I am paying $1.00 as compensation for service that I have been doing, but was relieved of in the factory. It might be bagasse that was stored on the other side, and it might not, but I could not consider anything outside of the premises that we were operating in." Since September 25, 1926, the date of the contract, the industry agreed to accept delivery at the place specified in the contract. For instance, our switch engine moves the cars consigned to the Celotex plant from our Algiers yards and sets them on the interchange track with the industry, and that is where our obligation ends. The clause in the contract above referred to, is for the purpose of relieving any possible misunderstanding as to what constitutes delivery (p. 5962).

I do not understand the contract referred to, and that is why I am paying $1.00 per car, to get rid of it and have nothing further to do. The test applied in determining what my obligation is to the Celotex Company, is what we actually performed before that contract went into effect (p. 5963).

Whether or not the Celotex Company would receive an allowance on cars of bagasse coming into our Algiers yard, over our main line, and subsequently placed on the interchange tracks and moved by the Celotex Company's power across to the Texas & Pacific side—the allowance is based on the line haul.

557 We could not perform the service of delivering the bagasse from the interchange tracks to the bagassee field without an agreement with the T. & P. We have no such agreement with the T. & P. There is no way of identifying which cars of bagasse go over to the T. & P. and which remain in the plant proper. The allowance is based only on the T. & N. O. side. We have nothing to do with where the industry places the inbound bagasse loads (p. 5965).

JOSEPH LELONDE, General Freight Agent, T. & N. O., was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5966):

DIRECT EXAMINATION

I am general freight agent of the T. & N. O. at New Orleans. I have prepared a brief statement as to the publication of the tariff and the adoption of the tariff by the T. & N. O.

The statement was received in evidence and marked "Exhibit A-106, Witness LeLond." It reads as follows:

EXHIBIT A 106

Morgan's Louisiana and Texas Railroad and Steamship Company's Local Terminal Charges Tariff No. 253, I. C. C. 4642-B, issued at New Orleans November 20th, 1926, effective interstate traffic December 23rd, 1926, intrastate traffic November 20th, 1926, provides for

an allowance of $1.00 per car to the Celotex Company for service performed in switching carload shipments of freight between loading and unloading tracks of the Celotex Company and track connections with the Morgan's Louisiana and Texas Railroad and Steamship Company at Marrero, La. This tariff was issued in accordance with my instructions as result of advice received from Mr. R. C. Watkins, Vice-President & General Manager, of an agreement made with the Celotex Company to make this allowance, as compensation for switching performed by that company, this agreement by Mr. Watkins having been made after conference with Mr. Chas. S. Fay, at that time Traffic Manager at New Orleans, and myself.

558 Tariff in question continues in effect today same as originally issued.

Under adoption notice filed with the Interstate Commerce Commission of date April 5th, 1927, all tariffs then in effect via the Morgan's Louisiana and Texas Railroad and Steamship Company were withdrawn by that Company, and adopted by the Texas and New Orleans Railroad Company. This notice includes specifically I. C. C. 4642–B, providing for the switching allowance at Marrero.

J. A. LYNCH, General Freight Agent, Texas & Pacific, was recalled, having been previously sworn, testified as follows (Vol. 6, p. 5967):

DIRECT EXAMINATION

Concerning the allowance of $1.00 per car to the Celotex Company at Marrero, Louisiana, this allowance was first published effective on interstate traffic on December 17, 1926, and on Louisiana intrastate traffic effective November 13, 1926, in Item No. 33 of Supplement No. 6 to Texas Pacific-Missouri Pacific Terminal Railroad Company of New Orleans Freight Tariff No. 34–D, I. C. C. No. 3, and is at present contained in Item No. 4.

559 Under common carrier contract both the Missouri Pacific Railroad and the Texas and Pacific Railway use the tracks of the Texas Pacific-Missouri Pacific Terminal Railroad Company of New Orleans in reaching Marrero, New Orleans, and other points on the Terminal Railroad's tracks. Under this contract the road haul trains of the Texas and Pacific or Missouri Pacific handle their freight to or from the train terminals and under the contract the Terminal Railroad performs the switching service in handling the cars between the train terminals and the industries located on the Terminal Railroad or connecting lines at New Orleans, Gretna, etc. The spotting of the cars by the Celotex Company is for the purpose of relieving the Terminal Railroad of the spotting service which it would otherwise perform if the industry did not do so, in view of which fact, as we have always felt and believed that as the service of spotting cars by the industry is for the purpose of relieving the Terminal Railroad Company of the service, the

allowance was properly published in the Terminal Railroad Company's tariff.

As to whether or not the allowance is made on traffic going to the south side of the plant, which is served by the Southern Pacific—the allowance is made on all traffic to or from the Celotex plant. Inbound traffic placed on the Southern Pacific tracks cannot be reached by our rails. Prior to the time that the new arrangement was made, we paid the T. & N. O. a switching charge of $3.30 per car for delivering cars to the Celotex Company.

560 E. S. PENNYBACKER, Manager, Texas Pacific-Missouri Pacific Terminal Railway, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5969):

DIRECT EXAMINATION

I am manager of the T. P.-M. P. Terminal Railway at New Orleans, La. I have held that position for about five years. Prior to that time I was assistant engineer for the Texas & Pacific, and in that capacity I became familiar with the lay out of the Missouri Pacific and Texas & Pacific Railroads at New Orleans, and the lay out of the Celotex tracks.

A map showing the location of the tracks at the Celotex plant was received in evidence and marked "Exhibit A–107, Witness Pennybacker." The approximate cost of spotting the cars delivered to the Celotex Company through the Terminal Company, as agent for the Texas & Pacific and the Missouri Pacific, would be about $1.00 a car. The allowance of $1.00 a car applies to, for instance, bagasse received for unloading and, in most cases the older bagasse is used as and when it comes in, and we would have to spot it on the storage tracks north of the terminal tracks—between the terminal tracks and the river.

The Terminal Company cannot, with its own power, spot the cars in the south side of the plant. The allowance paid includes delivery of cars by the Terminal Association, for the reason that a large part of the bagasse is from competitive territory and we have absorbed a switching charge of $3.60, and the $1.00 we are paying saves us just that amount. The $1.00 per car is for cars unloaded in bagasse storage, which is also paid on traffic south, and that is offset by the fact that we do not have to absorb the $3.60 on the competitive traffic (p. 5971).

561 Under the operating contract between the Terminal Company and the two proprietary lines, it is provided that per diem and demurrage charges on cars handled by the proprietary lines in line haul traffic, are accounted for separately. In other words, if the car arrives over the T. & P., the per diem remains in the T. & P. account; if it arrives over the M. P., it remains in the M. P. account. If it arrives over the Terminal Company we get a

rebate. If the Terminal Company handles it with the shipping interests, it settles with the proprietary lines—a separate account is kept for each road. Free time begins to run from 7:00 A. M. after placing cars on the interchange track.

The total allowance paid to the Celotex Company for the year beginning March 1927 was $4,096.00; 1928, $3,488.00; 1929, $3,027.00; 1930, $3,042.00; 1931, $448.00; 1932, to date, $6.00 (p. 5974).

562 GREAT SOUTHERN LUMBER COMPANY

(Hearing held on May 10, 1932, at New Orleans, La.)

J. P. CASSIDY was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5037):

DIRECT EXAMINATION

A map showing the tracks of the New Orleans Great Northern Railroad was received in evidence and marked "Exhibit A–27, witness Cassidy."

The tracks shown in red on the map leading to points of loading in the Lumber Company's yard are known as joint tracks. The railroad furnishes the non-perishable material, such as rails and rail spikes and bolts, and the Lumber Company furnishes the ties or perishable material, and each company pays a portion of the labor cost. It is my understanding that the tracks are owned and were constructed by the N. O. G. N. The maintenance of the tracks are under some agreement between the railroad and the industry. The tracks shown in black on exhibit A–27 are owned by the Bogalusa Paper Company. The tracks shown in green are owned by the Great Southern Lumber Company (p. 5039).

The tracks shown at the top of the exhibit and described in the first paragraph of the legend thereon include the main line track and yard tracks of the N. O. G. N. Railroad. These tracks are used for making up trains, storage, weighing outbound loads, and for general yard purposes by the railroad, and are used not only for traffic of the Lumber Company but any other traffic handled by the N. O. G. N. in that territory.

The Lumber Company has very little inbound traffic, principally coal, which is delivered to the industry on a track designated as G. S. L. coal track shown in green on exhibit A–27.

563 Empty cars for loading, outbound, are placed on various tracks shown in red on exhibit A–27.

The N. O. G. N. classifies and delivers loaded and empty cars on tracks in its south yard designated by the Lumber Company for interchange, and such cars are then moved at the convenience of the Lumber Company by its locomotive to the points of loading or unloading within the plant. We feel we are doing work that

the railroad would have to do with another engine under our supervision. We do the work and in turn bill the railroad for the actual cost of operating and maintaining the switch engine (p. 5042).

This same switch engine performs service for the Bogalusa Paper Company. Most of the inbound loads are delivered to the Paper Company on what is known as its wood yard track. Some cars, however, for the Paper Company are delivered on the Lumber Company's tracks and are placed there by railroad power. So that the N. O. G. N. has some kind of trackage rights over these tracks leading to the Lumber Company.

The N. O. G. N. places the cars for the Paper Company and the Great Southern Lumber Company on designated tracks, and the switch engine, which is operated by the Lumber Company for account of the New Orleans Great Northern Railroad, takes these cars and delivers them to the spot for loading and unloading (p. 5044).

The Union Bag & Paper Company and the New Orleans Corrugated Box Company are also served by the switch engine of the Lumber Company for and in behalf of the N. O. G. N. The Union Bag & Paper Company is located on what is designated as the Bogalusa Paper Company's loading track number 2, at the extreme end of this track.

The New Orleans Corrugated Box Company is located next to the tracks of the Bogalusa Paper Company designated
564 as Bogalusa Paper Company's loading track number 1. For this service the Lumber Company is reimbursed for the actual operating cost, which includes wages of the engine crew, engine supplies and fuel, and depreciation of locomotive.

The Bogalusa Paper Company and the Great Southern Lumber Company are owned by the same interests.

The Union Bag & Paper Company and the New Orleans Corrugated Box Company are owned by separate interests.

The New Orleans Corrugated Box Company must be reached over the industrial tracks of both the Great Southern Lumber Company and the Bogalusa Paper Company. The plant of the Union Bag & Paper Company must likewise be reached over the tracks of the Great Southern Lumber Company (p. 5047).

There is no direct track connection between the New Orleans Corrugated Box Company and the New Orleans Great Northern Railroad, or between the Union Bag & Paper Company and the New Orleans Great Northern Railroad (5047).

Q. Can you tell us why the power of the New Orleans Great Northern does not enter in and upon the tracks at this point and there perform the service in spotting the cars for loading and unloading at the two industries it does reach, that is, the Great Southern Lumber Company and the Bogalusa Paper Company?

A. My understanding is our company could do the work cheaper for the railroad company and more satisfactorily (5048).

Q. Do you know of any physical operating consideration
565 that would prevent the power of the New Orleans Great Northern from entering upon the industrial tracks of the Great Southern Lumber Company or the Bogalusa Paper Company and doing this work?

A. The class of engines the railroad company are now using in the switching service could not operate practically over some of these tracks on account of the weight of the locomotives and the weight of the rail.

Q. Is that one reason or the principal reason why the New Orleans Great Northern has the service performed by the Great Southern Lumber Company?

(Fol. A–617.) A. I do not know that is the principal reason, but I do know it is one of the reasons (p. 5048).

The Great Southern Lumber Company ships outbound a considerable volume of lumber and lumber products going to points beyond the State of Louisiana.

Q. Is the location of that lumber mill within what is generally described and defined as the yellow pine blanket in the south?

A. Yes, sir.

Q. The same rates for transportation applies from that location that apply from other points in that yellow pine blanket?

A. I am not familiar with rates. That information will have to be gotten from the traffic department.

Q. You do know it is in the yellow pine blanket?

A. It is in the yellow pine district (5048).

A statement showing the number of inbound and outbound loads for the various companies switched by the Lumber Company's engine, was received in evidence and marked "Exhibit A–28, Witness Cassidy."

The Great Southern Lumber Company operates just one engine in performing the service for the four industries.

566 A statement showing the amount collected from the N. O. G. N. for the month of January 1932, covering the service performed by the Lumber Company, was received in evidence and marked "Exhibit A–29, Witness Cassidy."

The service performed by the engine of the Lumber Company for the four industries is more efficient than if the N. O. G. N. performed this service with its own power in reaching the several industries. In order for the N. O. G. N. to reach the New Orleans Corrugated Box Company, and the Union Bag & Paper Company and the Bogalusa Paper Company, it would be necessary to secure trackage rights over the tracks of the Lumber Company.

Q. Now, what are the considerations, if you happen to know, physical or otherwise, that makes the service you now render more efficient; is it a matter of delay that the New Orleans Great Northern might experience in its power if it tried to serve the four

industries, or is it a matter of (fol. A–621) interference with the industrial operations in and upon the industrial tracks of either of the four corporations?

A. I would say it would be more of a matter of interference as far as delay was concerned, because we have other engines of our own that operate in there too.

Q. Those other engines are engaged in making shifts from one part of your industrial operations to another part?

A. In that and delivery of logs to our mills.

Q. So that if the New Orleans Great Northern's engine entered upon those tracks it would encounter interference with your industrial engines engaged in making these shifts from one part of your plant to another part of your plant, and in the handling of the logs and so forth?

A. Yes, sir. We would have two engines belonging to two
567 different companies, and under the supervision of two different companies operating over the same yard track.

Q. And was it to overcome this interference you entered into this arrangement to perform the service for the New Orleans Great Northern?

A. Partly so.

Q. Is there any classification of the cars made—that is, the inbound traffic for either the Great Southern Lumber Company, the Bogalusa Paper Company, the New Orleans Corrugated Box Company, or the Union Bag & Paper Company—is there any classification of the inbound traffic made by the N. O. G. N. before the cars are placed upon the interchange tracks connecting with the track of the Great Southern Lumber Company in the south yard?

A. Yes, sir; they are generally classified as to flat cars on one track, box cars on another, and gongs on another by the switch engines operated by the railroads themselves.

Q. That classification is done on the railroad tracks outside of your plant?

A. Generally; yes, sir (5051).

Q. And I suppose there is a further classification of the traffic going to the different industries?

A. Inbound loads going to the Union Bag & Paper Company, New Orleans Corrugated Box Company, and the Bogalusa Paper Company are generally classified together, with the exception of wood, paper wood, which is separated on a track to itself.

568 Q. Does the engine of the Great Southern Lumber Company perform this service required to make some further classification of the traffic after it is put on your tracks?

A. Yes, sir.

Q. That is done by the Great Southern Lumber Company's engine on the Great Southern Lumber Company's tracks?

A. Yes, sir (5052).

G. P. Brock, Assistant General Manager, G. M. & N. and N. O. G. N., was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5054):

DIRECT EXAMINATION

I am assistant general manager of the Gulf, Mobile, & Northern and the New Orleans Great Northern Railroads. My experience with the switching operations at the Paper Company and the Lumber Company extends as far back as September 1930.

The railroad operates two yard locomotives, that is, they work two shifts of crews, one beginning at 9:30 A. M., for eight hours, and another at 8:00 P. M., for eight hours. These crews not only perform the service of breaking up and classifying of trains in the train yard, but they switch other industries at Bogalusa with which we have a physical connection. The switching limits extend northward from the south yard a distance of 5½ miles.

If we were to attempt to do the work for these allied industries, with our own power, it would be inconvenient from the standpoint of the railroad, due to the fact that our yard locomotive when it is called for service within these industries, might be 5½ miles
569 away. The industrial operations at these industries would, therefore, be delayed or neglected, in order to permit this engine to go back to the Great Southern Lumber Company's track. This would also delay traffic in transportation.

Q. Now, clarify further the saving to the railroad in the expense of this operation as compared to an operation whereby the railroad would itself perform the switching?

A. Through the necessity of the time and being charged with the responsibility for economical operation of the railroad property, it has been necessary to reduce all engine hours, both on the road and in the yards, to a minimum, and in order to perform the necessary work with the least number of train yard hours, we have found it necessary to place our largest units of power on the yard jobs. The engines we now have assigned at Bogalusa could not be used to an economical advantage on the 56 pound rail within the yards of the industries, on account of the fact that the axle load on the drivers of the Russian decapod locomotives is too heavy for the size of the rail. The assignment of heavy locomotives at Bogalusa is in keeping with the general policy at other points where a great deal of switching is required, not only on the New Orleans Great Northern Railroad, but on the G. M. & N. R. R.

The time required for the industries at Bogalusa requires a switch engine on duty for a period of 12 hours, beginning at 7:00 A. M.; working under the Hours of Service Act (p. 5055).

Whether it would require one crew eight hours' straight time, and continue for four hours longer at a penalty rate, or two crews, one eight hours, and pay another crew at the rate of
570 eight hours for four hours' service, in either event, it would

be more expensive than the amount paid by the Great Southern Lumber Company to its switching crew. It would cost the railroad approximately twice as much as the present arrangement, if the railroad performed the service itself.

The industrial trackage shown on exhibit A–27 is about 35 miles in length.

Demurrage begins to run at the time the cars are placed for loading or unloading at the plant of the Great Southern Lumber Company.

The average number of loads handled by the industrial engine for the first four months of 1930, 1931, and 1932, amounted to 46 loads per day, exclusive of Sundays.

We have no other industry on our line comparable in size to the Great Southern Lumber Company and the allied industries (p. 5058).

CROSS EXAMINATION

The arrangement providing for the allowance to the Great Southern Lumber Company was entered into on October 1, 1931. I believe the moving spirit in this allowance was the Great Southern Lumber Company and contemplated service to the industries heretofore referred to, as well as the Lumber Company.

Q. Now, in your direct testimony, you referred to some factors of saving in the operating cost to the N. O. G. N. Among them was the fact that the industry had to be served continuously within the day, as I understand it?

A. That is correct; yes.

571 Q. That is to say the engine had to be available to spot cars whenever required to do so by the industry?

A. It should be; yes.

Q. In order to meet the convenience of the industry in its processes?

A. That is correct (p. 5059).

If the N. O. G. N. had to assign a locomotive to the plant to perform the service, that locomotive might have to lie idle and would have to wait upon the industrial operations at times. In order to meet the demands of all the industries that are to be served, not only within these groups, but the other outlying industries, we would find it necessary to place our own locomotives and crews in this territory, and would have to go to our shop and prepare a smaller engine—an engine that is now out of service, and place that engine in actual service.

Q. The preceding witness told us at times the same engine that performed the service between the track connection of the N. O. G. N. and the unloading and the loading spots within the plants, performs what we speak of as an intra-plant service, shifting materials from one point within the plant to another point within the plant (5060)?

A. I didn't hear the testimony, but what we do here, so far as the

transfer from our yard engine to the train yard, it is our engine working for our account within the industry, and we take our box cars out of the train and put them in these tracks numbered from 16 to 21; we place our flat cars on track number 5; we place the gondolas on the mill's order on track number 3. The inside engine then spots these cars to the point the industry desires.

572 Q. You mean the industrial engine?

A. I mean our industrial engine.

Q. What I was coming to, if your engine went further than you have just described and went to the points or undertook to go to the different points of placement where the cars are unloaded or loaded, you might encounter interference by the operation of the industrial engine within the plant, which you spoke of as the inside engine, making the shift in and about the industrial operation. Was that a factor that would add somewhat to your cost or was considered in comparing your cost of serving that plant and the cost incurred by the industry's engine (5060)?

A. It was a factor that was considered at the time the expense for reimbursement for the service was established (5061).

Director BARTEL. What was the arrangement prior to the time you entered into this agreement for serving these plants (5061)?

The WITNESS. There is quite a lot of history, Mr. Examiner, connected with it.

Director BARTEL. I mean did you get in there and serve them prior to this arrangement?

The WITNESS. No.

Director BARTEL. Or was it handled by you in the same way, or how was it handled?

The WITNESS. The physical handling was the same so for as the railroad doing the work or the engine of the industry doing the work.

573 Director BARTEL. But prior to this agreement, you paid the industry nothing?

The WITNESS. We paid them something, but didn't pay them on the same basis. We paid them less (5061).

In the early day of the operation of the respondent and the Great Southern Lumber Company, the respondent did all the switching at Bogalusa, which arrangement was unsatisfactory to the lumber company (5062).

Sometime in 1911 or 1912, the Great Southern Lumber Company, at their specific request, took over the switching of their plant, assuming all of the cost, and this arrangement continued in effect until April 1, 1925, at which time the Lumber Company insisted that the respondent carriers should bear their proportion of the cost. The Bogalusa Paper Company began operations in 1917, and also performed its own switching at its own expense until April 1, 1925, at which time the Paper Company also insisted that the respondent carriers should bear their proportion of the cost. It

was recognized it would be in the interest of efficiency and economy to have the Lumber Company and the Paper Company perform all the switching at their respective plants, and that the respondent carriers should reimburse the industries for the cost of per-
574 forming the switching on road haul shipments. From April 1, 1925, to October 1, 1931, the Great Southern Lumber Company and the Bogalusa Paper Company were compensated for service performed for the respondent carriers on the basis of a certain proportion of all wages of the switching crew; that is, the respondent carriers paid the wages of one switch engine crew of the Great Southern Lumber Company, the Lumber Company furnishing the locomotive and assuming the other expenses, such as coal, mechanical labor, and so forth. The respondent carriers assumed three-fifths of the wages of the switch engine crew of the Bogalusa Paper Company, effective October 1, 1931, when the present arrangements went into effect. Prior to October 1, 1931, the traffic for the Bogalusa Paper Company was picked up by the carriers on the Lumber Company's track, that is, they operated over part of the Lumber Company's tracks (p. 5063).

J. P. CASSIDY was recalled and testified as follows (Vol. 5, p. 5063):

DIRECT EXAMINATION

Any shifting or replacement that is done after the original placement in the yard is performed by another engine owned and operated by the Lumber Company. The cost represented on exhibit A-29 for engine number 8 represents only the interchange service performed by that engine, because that engine was not engaged in any other service.

At the time the Bogalusa Paper Company performed its own switching the engine was owned by the Lumber Company and rented to the Paper Company. Since the present agreement was entered into the Paper Company pays nothing for the service, but prior to October 1, 1931, they did pay rental for the engine and the actual cost of operation (p. 5065).

575 STANDARD OIL COMPANY OF LOUISIANA

(Hearing held on May 11, 1932, at New Orleans, La.)

R. W. J. FLYNN, Traffic Manager, Standard Oil Company of Louisiana, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5174):

DIRECT EXAMINATION

I am traffic manager for the Standard Oil Company of Louisiana, and conduct all traffic matters for my company. I have held that

position since April 1926. The present plant at North Baton Rouge, La., was in operation at that time.

At the time I assumed my position as traffic manager the plant railroad facility at the refinery at North Baton Rouge was performing the spotting services at this refinery without compensation from the rail carriers serving this plant.

A map of the Baton Rouge refinery showing the track lay out was received in evidence and marked "Commission's Exhibit A–37, Witness Flynn."

A. Prior to August 1927 the spotting and pulling services from the interchanges of the Y. & M. V. and L. & A. Railroad was performed by the industry (5175).

This is a rough outline of the plant and the rails, both the rails of the Standard Oil Company of Louisiana and the L. & A. and Y. & M. V.

A. There has been noted on this exhibit certain interchanges along the line of the L. & A. Railroad, the northernmost one I do not check as an interchange but as a cross track entering the storage yards of the Union Tank Car Company, although on this exhibit it is marked as an interchange. If by the term interchange is meant the point where the industry either receives or delivers to the common carrier either loads or empties, then the notation on this map is in error (5176).

576 Proceeding further southward on the exhibit as presented there are two other points of interchange noted thereon in close proximity to each other, just immediately south of what is generally referred to locally as the Old Frisco Boat Yard track. It is that portion of rails shown in the triangle there, and within that area where the Y track of the L. & A. Railroad is; that is not an interchange point. Sometimes for convenience interchanges are effected at a point directly north thereof at the Frisco Boat Yard Track referred to a few moments ago. The fourth interchange point noted on this map in red is nothing but a curve track entering the plant. And so with the next two, proceeding southerly. Also the one springing from the rails of the L. & A. into the plant in a westerly direction is nothing but a curve track. The interchange track, as I understand the expression is that track or tracks where an industry or carriers as between themselves interchange either loads or empties for carriage for beyond, and the interchange designated on this exhibit at the southernmost point is really where all the work is done insofar as interchanging with the L. & A. Railroad is concerned.

Now, insofar as the Y. & M. V. is concerned, apparently the person marking this map has indicated curved tracks or approach tracks where they enter the plant property. Again repeating the fact that as I understand interchange relations and the definition which I have stated before, that interchange actually is north or just east on the way lands of the Y. & M. V. Railroad across from the plant of the Louisiana Steam Products Company (5177).

577 Q. Now, Mr. Flynn, under your description and definition of interchange as you understand it, and which is in accordance with my understanding, I will be glad to have you, if you will, indicate on the print the two places where you do make interchanges, first with the L. & A. and second with the Y. & M. V.

A. [Witness marks on sketch.] In making these designations, please bear in mind that we do not go out on the main tracks of the Y. & M. V. at any time whatsoever.

Q. I understand that those are the only locations where you do interchange traffic, either empties or loads, with the two respective railroads?

A. Those are the two officially designated interchanges. However, subject to a local situation that may come up in local terminal arrangements at any time, we have been known to come down here on this Y. & M. V. track here, which is an interchange, and we can set out loads or empties there.

Q. Can you show here the tracks?

A. Those are immediately west thereof, and also the Frisco Boat Yard; it is merely a matter of local terminal convenience (5178).

578 Negotiations leading up to the time when an allowance was paid the refinery for the spotting service were conducted by me as traffic manager. We asked the carriers to perform the service in view of the fact that they are obligated to do so under the law. A cost study was made, a very accurate one, by representatives of the carriers and the industry. As a result the carriers made the offer of $1.20, which we are receiving today under the duly filed tariffs. This figure was also approved by the Louisiana Public Service Commission on intrastate traffic. That figure was not acceptable, as the actual cost of operations was far above that and is even so today. At that time the Louisiana Railroad & Navigation Company was operating through the plant, from north to south, and east to west, and its cost of operation due to the wage scale it paid boomer engine drivers was somewhat lower than that paid by the Y. & M. V., operating under standard wage agreements. We were very careful not to accept anything in the slightest degree that could be considered a fraction of a cent above the actual cost of the service we were rendering, and therefore accepted $1.20, which at that time I believe was 15 cents below what the L. R. & N, could perform the service for.

A request was made to the Illinois Central and the L. & A., at the same time, to perform the service. The request was not made because we were dissatisfied with the service rendered by our own power, but because the carriers are lawfully required to perform such service. The industry was bearing the burden of the expense, a considerable expense at that time, which should properly have been borne by the carriers.

We never discussed an allowance with the carriers. As far as we are concerned, it doesn't make any difference whether the
579 carriers perform the service or not; if they wish to do it at any time that is alright with us. In the term "service" I have reference to the same kind of service we are now rendering for ourselves. There is no difference between the service that would be required from the carrier than that which we are performing with our own power (p. 5181).

The refinery operates five engines in interchange service, only one engine on each shift. We operate on a 24-hour work day, in three shifts. We have very little intra-plant switching. From April 1 to 27th, 1932, inclusive, we only averaged five and three-quarter cars per day in intra-plant movement. Privately owned railroad equipment, Union Tank Car Compartment cars principally made up those five and three-quarter cars per day. With a compartment car we load one compartment with gasoline, another compartment with kerosene, and still a third compartment with lubricating oil. Naturally we have to move the car to the lubricating oil plant in order to make that second loading. These cars are leased from the Union Tank Car Company.

If we used any railroad equipment in intra-plant switching, such as box cars, for instance, we would notify the railroad and pay them accordingly. We operate on an average demurrage agreement, and free time begins to run on cars from the first 7:00 A. M., after they have been placed on the interchange tracks, Sundays and holidays excepted (p. 5182).

Inbound commodities received at the North Baton Rouge plant consist of caustic soda, steel, lumber, steel barrels, crude oil, casing head gasoline, and the usual miscellaneous refinery supplies. In 1931 we received at the North Baton Rouge plant 3,299 tank cars of all descriptions and 2,986 cars, railroad equipment, of other commodities.

580 In 1931 we shipped outbound, tank cars, 28,996, and railroad equipment of miscellaneous commodities, 3,715, scrap iron, 393; and scrap lead, 7, a total of 33,111 cars during our very lowest year (p. 5184).

The number of trips each day our power is required to make to the L. & A. interchange track, for the purpose of making delivery and receiving inbound traffic, varies with the volume of business. The average would be one trip in the morning and one in the evening,

With respect to the Illinois Central we may make four trips to the interchange tracks, pulling all empties in the morning and setting the loads out in the evening. It may be necessary to make other trips in the evening with miscellaneous loads from the lubricating rack, asphalt rack, and warehouse loading platform. The inbound empty equipment when moved from the interchange track, say with the L. & A., is placed on the loading rack track; if those cars are

not required for loading on that track they would be set on the old Frisco Boat Yard track. If, however, the yardmaster knew that he was going to require cars of that capacity and classification, they would not be put on storage tracks but would be put in close proximity to the loading rack.

When we receive a cut of cars from the L. & A., for instance, it is necessary that a classification be made as to their fitness and capacity of tank cars from the standpoint of the use to be made of them, whether it is fuel oil or an asphalt car or lubricating oil or a refined oil car. Upon the completion of the classification the cars are distributed with plant power to the loading racks as ordered. The orders as to the various cars emanate from the Shipping and Order Department, and the Plant Railroad Department makes
581 the physical distribution and controls the switching. In other words, the empty cars coming in from the L. & A. at the designated interchange point are received unclassified. They are moved from the interchange track by industry power, to a point south of the Frisco Boat Yard and are classified by our engine according to capacity and use, and held in readiness for distribution to the loading racks as called for by the Shipping Department. Classification not only takes place at the Frisco Boat Yard, but may be done at the point most convenient for our operation.

Our program is so arranged that our yard crew is notified the night before just exactly what type of equipment from the standpoint of capacity and use is to be needed or required in the morning at a particular platform. Loadings begin at 7:00 A. M. and the cars are placed ready for the employees when they return to work the next morning (p. 5187).

The same operation described in connection with the L. & A. likewise applies to the Y. & M. V.

After the cars have been spotted during the night at the loading rack, for gasoline, the loading requires about two hours or two and one-half hours. The car is sealed, placarded, and side carded. Prior to loading it has been inspected on the interchange track for any violations of M. C. B. regulations. Upon the completion of loading the cars are moved out as soon as possible, and if the volume of business and orders requires it, we place another cut at the same location for loading. That would be a continuous process throughout the day if we had sufficient orders and in order to keep our plant in operation to that extent, it would be necessary to have an engine there all the time to spot the cars when needed. That, we think, would be an obligation on the part of the Illinois Central (p. 5188).

582 In moving cars from the L. & A. interchange track it is necessary to operate over the tracks of that carrier. We have trackage rights and are paying 6 percent on the investment as outlined in the I. C. C. valuation reports, and in addition are paying the actual cost of maintenance of those tracks. The L. & A. bills us annually.

We have 47 loading locations or districts within our plant, and can load simultaneously at our plant 498 cars. For instance, our refined oil loading rack has a hundred spots. We can load a hundred cars at once. That I would say is a loading district consisting of four tracks.

A photostatic copy of a blueprint, showing in white circles numbers from 1 to 47, designating places or areas for loading and unloading, was received in evidence, and marked "Commission's Exhibit A–38, Witness Flynn."

The industrial tracks contain numerous curvatures from 7 to 25 degrees. The tracks with 25 degree curvatures are considered as impossible for railroad engines to operate thereover in performing spotting service. If the carriers attempted to operate over these latter tracks it would be necessary to use buffers. These tracks could be changed to accommodate the railroad's power.

As to why the Standard Oil Company operated its own motive power from the beginning of plant operations, I can say this, from practical experience, in the construction of all refineries it is necessary for all large pieces of equipment to be moved and considerable intraplant work to be performed, and I have never known a refinery to be constructed without providing its own motive power to do its own work. The intraplant switching charges of the carriers are too expensive.

583 Two carriers serve our plant direct and two indirectly through traffic agreement. If the two carriers, L. & A. and the Y. & M. V., should enter the plant there would be no interference with our plant operations, but if all four carriers were to attempt to perform the switching within our plant there most assuredly would be interference with our plant operations. It would be an impossible situation. As to whether the L. & A. and Y. & M. V., serving our plant from opposite sides, could perform the switching within the plant, it could be done—it is not absolutely impossible, but it certainly is not the best way to do it and it is not good railway practice. As far as we are concerned the railroads could come in and do the switching, but they would have to do it under our jurisdiction while they are in the refinery area, that is, we would tell them where they were required to switch to and from, and the crew and the engine would be under our control (p. 5191).

In the usual course of operations at our plant it would be necessary to have an engine there all the time to perform the switching as required. We never use all of our five engines at one time. During normal operations three engines have been used at one time, but at this particular time one engine is doing the work.

If the Illinois Central were to switch our plant I would consider the service equivalent to a simple or team track switching. The most distant spotting location from the Illinois Central interchange track is about a half mile. We put less than a thousand cars in that area.

The latest calculation made on March 29, 1932, showed the mileage of trackage within the refinery area, 12.47 miles within the refinery, 5.10 in the Union Tank Car Storage Yard and 0.85 in the Union Tank Car repair shed, or a total of 18.42 miles.

584 If the L. & A. were to perform the spotting in our plant, they would do it identically as we are doing, that is, they would place the cars on the hold track and as they got orders from the plant they would go to this track and get the cars to be spotted. The terminal work at this plant is a development over a number of years, and as far as we can determine with our close relations with the carriers, and in kindly cooperation with them, we have worked out a service most satisfactory to both of us from the standpoint of the carriers' convenience as well as ours.

When the cars are placed for loading on the loading tracks at the 47 spots, or 47 districts, and an order is given both carriers to come in and take the cars out, and bring in another cut of cars and spot them at the same place in lieu of the loaded cars taken out, whether or not there would be interference—I think there would be some interference if the two railroads were operating in the same territory, for the same reason I don't think two engines could go on the same track going in opposite directions. However, a plan could be worked out to do that very easily by yard dispatching. The system is not in operation at this time, but is very feasible, and insofar as the large loading rack with 100 spots is concerned, we would not let the Y. & M. V. in the clear until we had gotten the L. & A. out, or vice versa. The question brings to mind this thought: "It just isn't good railroad practice, and I don't know where it is done in this country." The railroads would have to spot the tracks at our convenience; not interpreting "convenience" to mean our arbitrary wish, but in the interest of efficient operation.

585 By Director BARTEL:

Q. Well, taking your loading racks up there: You have certain cars you want to place to the loading rack, that you get in from the L. & A., that you want to go out by the L. & A. I assume you would order cars for the same loading rack that day by the Y. & M. V.?

A. That might happen.

Q. Would both engines bring those cars in the same night, both engines?

A. Well, that is all right; it could be done, but I can't take any position here to say that it would run along smoothly.

Q. Well, how could it be handled if the carrier—you say you are willing——

A. It could be handled this way: The answer isn't your theory.

Q. I haven't any theory, I am just trying to find the facts.

A. Well, pardon me, Mr. Director; those are leading questions, and I am not going to answer them.

Q. You say you are willing to have the carriers come in and do the spotting; I want to find out.

A. They are certainly hypothetical questions, and I don't care for them. That plant could be switched by one railroad or the other, alternating from month to month; that is railroad operation and economy.

Q. How could the L. & A. switch for the Y. & M. V.?

A. By arrangement among themselves; it is being done right now in Shreveport, L. & A.

Q. You mean the I. C. would have to come down over this interchange track to the L. & A. to get those cars?

A. That could be done. I have never known any railroad
586 man in this country to handle two terminals the same way, and 80 per cent of railroading is terminal work, and I don't know any terminal that is operating the same way, whether it is these 18 miles of track, or the switching limits of Baton Rouge, or the switching limits of New Orleans. You have no two problems the same.

Q. We are trying to determine here now, if this is the carrier's obligation and they are called upon to do it, how they would do it in a manner satisfactory to the plant.

A. Assuming and attempting to answer your hypothetical question, Mr. Director——

Q. It is not hypothetical.

A. Well, of course, you and I understand each other. I say hypothetical, because I can't conceive of two railroads coming in tomorrow morning and suddenly deciding to switch this plant. There must be some preliminary arrangements made in advance as to where who goes and where the other one doesn't go.

Q. Made with whom?

A. With us.

Q. Why?

A. Because they are coming in on our property.

Q. If it is their obligation, why can't they do it without your convenience?

A. They can't go down on Bill Jones' side track without letting him know they are going to put a car in there, and they can't come into our plant without a spark arrestor on our property. As far as I am concerned, I wouldn't have anything to say about it, that is a matter for our general attorney to say just when they can come in there and under what circumstances. It is a matter of con-
ventional agreement. The railroads have to spot; as far as
587 we are concerned, we told them we wanted them to come in there and perform their lawful requirements, and instead of that they offered us $1.20, and we finally agreed to it.

Q. That is what you wanted in the first place, wasn't it?

A. I am not going to answer that question, Mr. Director. I think it is an unfair question, and I don't think you intended to ask it.

Q. Certainly I intended. If I hadn't I wouldn't have asked it.

A. Well, then, the answer is no (p. 5197).

Q. Were you present at the meeting of the president of your company and Mr. Downs of the Illinois Central (5197)?

A. I certainly was.

Q. At which this allowance was made?

A. I certainly was.

Q. Didn't your president state at that conference that is exactly what he wanted in the first place?

A. He did not, Mr. Examiner, and I have the minutes of that meeting right here, and at this point I would like to submit that to our counsel in this matter for his consideration (5198).

When I said we could expect the same service from the railroads, if they performed the spotting within the plant, that we are now performing for ourselves, this service would include the classification of the inbound empties in the same manner that we now classify them on the Frisco Boat Yard track or elsewhere within the plant. The railroad would have to classify the cars before placing them for loading. The carriers can very readily classify the cars outside of our plant, not only with reference to capacity but also classify
588 them with respect to the products to be loaded therein. The Y. & M. V. and the L. & A. are very familiar with not only the classification of the cars at this refinery, but also the use to be made of them (p. 5199).

Q. Now, we are to understand your testimony as meaning that so far as the industry is concerned you would have no objection to the separate railroads performing the spotting service required by the industry on the industrial plant tracks?

A. We cannot have any objection to that, Mr. Haggerty, for the reasons that I have tried to explain before. Spotting and pulling service is a lawful obligation of the carrier. So, therefore, if it is part of the revenue and contractual agreement, as per the bill of lading, the L. & A. Railroad, we will say, they would have a perfect right to spot that car in the plant where it was required. The same situation would prevail with the Y. & M. V. It would have a perfect right to carry out its contractual obligations. That is as I view it.

Director BARTEL. But only at the convenience of the plant (5201)?

The WITNESS. That convenience would be mutual, Mr. Director, as I take it, and as I view the situation for the future.

Q. Would that require an engine or more than one engine of each railroad to be maintained at the railroad or at the plant all the time?

A. It is my opinion, Mr. Haggerty, that that would require an engine of the L. & A. and an engine of the Y. & M. V.

Q. Each taking care of the respective business that is interchanged between their lines and the industry?

A. Correct, sir. And on the other hand, the maintenance of those two engines, which would be required, as I conceive the picture,

would be necessary, notwithstanding the fact that if one railroad could agree with the other railroad to switch the plant, only one engine would be required, as we do it now with one engine (5202).

589 Q. You don't intend to convey the impression that the two switch engines could be operated at the same time in the plant, doing the respective work of each plant?

A. I did not intend to convey that impression, but such a situation is all right; it can be done. They could both operate in the plant at the same time during the same period and not conflict with each other; they could be so assigned work and not conflict.

Q. That is to say, one engine and crew would not have to wait on the other in order to get to the different locations?

A. I cannot conceive of these situations arising except very, very seldom.

Q. Now I ask these questions because I wanted to have myself at least a clear understanding of what you meant when you responded to the director to the effect that—I take this to be your statement, I may be wrong—that it would be impractical as a railroad practice, practical railroad operation, to have more than one road undertaking to switch your plant at the same time (5202).

A. Well, in that answer and in your understanding of it, I think you are correct. What I intended to convey to the director was this, that it has not been railroad practice in the past, railroads themselves have always found it advantageous to themselves to enter into mutual agreements to switch a plant where two or more of them served it, conserving to the lowest possible point their

590 own motor power and manpower. That would be an arrangement which I don't see that the industry would be in the least bit concerned, except they would have to notify the industry that is what they had agreed upon and the industry would have to take it or leave it (5203).

Q. Your thought is that if the carriers undertook to perform the service it should be undertaken upon some such a pooling arrangement as between them?

A. I guess that is correct, the correct term "pooling of service"; yes, sir. I don't like to enter the category and use the word "pool"; it is rather a dangerous expression to use.

Q. I might say under some arrangement which would permit the railroads to serve the plant alternatively?

A. Yes, sir.

Q. You are also of the opinion, however, that they might serve the plant and render some service effectively to the industry that the industry is now performing for itself independently of each other?

A. Yes, sir; I cannot see that that cannot be worked out. It is something for the future. As far as I know it may be working out now in some other part of the country, but I do not know of any,

where you have two or more railroads serving the same industry when they could pool their interests properly and lawfully so and make—render the same service to the industry, for the reason that I don't see why they should occupy or why they should have two engines in service when one would do the same amount of work (5203).

591 Q. I have been trying to keep in my own mind a comparison as between the services performed on your industrial track and that performed on the ordinary spur track where there is no large layout of industrial track such as you have here. I think you said in response to one question you thought the services were comparable with the ordinary service on a team track.

A. That is correct, sir; I replied to the director in answer to one of his questions that I saw no difference in the service (5203).

Q. Now, as I understand this team track service, or ordinary spur service, the carrier at its own convenience shunts the cars in on the team track, not at any particular location, but at the location that is available for use, vacant at that time, and goes no further, and when it comes to serve an ordinary spur track there is a like performance, the shunting of the car in, perhaps the leaving of it in an accessible position to unload. Now as you describe your service, it seems to me you require something more than that; first, the classification, then the placements at particular times in accordance with requirements of your Shipping Department, the necessity for a locomotive or two being present at the plant at all times in order to respond to these calls. Would you consider that something more than a substitute for the ordinary team track service, because of the factors I have mentioned and you have described yourself in your direct testimony?

A. If the actual condition was as you have described it, and as you have absorbed it from my previous remarks, I would say

592 there is some slight additional service being rendered, but the facts are that there is not. On the contrary, the spotting of that car would be thoroughly understood in advance; your inbound cars of casing head gasoline are designated for a certain particular track. They could be spotted right on the dump track where casing head is unloaded——

Q. Pardon the interruption. Through one uninterrupted movement from the train yard of the railroad through your tracks to the spot (5204)?

A. Yes, sir; correct. For illustration, the Y. & M. V. Railroad come in and make their man move down the Illinois Central cars on the Baton Rouge & East Hammond Railroad at Baton Rouge, and bring in on that train in the morning 50 cars of various kinds and classes. They might have 5 cars of casing head gasoline, 3 empty cars, 20 kerosene empties, and several box cars, practically a whole train load for the Standard Oil Company at North Baton Rouge. Well, they will spot the box cars where they are required, spot the

casing head. They have to cut the casing head cars out of the train, and they would spot them exactly where they are required, and they could do that instantly upon their arrival, because the tracks would not be occupied at that time by anything still loading, and if there was any box car on any particular track or location set forth in the map which was furnished the director, it would only be a question of moving it up so this other car could be set in there for immediate unloading, and living up to the average agreement on demurrage, as you know. Now as it stands now, that entire cut of cars is set out upon the interchange and our engine goes out and brings them in and spots them. The mechanics of both would be the same regardless of the ownership of the power. It becomes more or less a matter of human equation rather than one of mechanical procedure (5204–5205).

593 Mr. HAGGERTY. I think that is all.

By Director BARTEL:

Q. I just wanted to ask you one more question. Under what conditions would you permit the carrier power to enter your plant?

A. Why, the usual conditions under which they enter the plants of any other industries.

Q. What are they?

A. I do not know offhand, Mr. Director, just what requirements have been asked of the carriers or what arrangements have ever been made by industries under those circumstances.

Q. Well, I don't know, either, and that is the reason I would like to know, because I think the carriers ought to know in determining whether or not they could meet those conditions and serve your plant, if that is their obligation (5205).

A. We have answered that question in the questionnaire, Mr. Director, which your probably have. That would be the only answer that I could give.

Q. You mean the letter you wrote the Service Agent?

A. The questionnaire which we submitted to Mr. Nused. The question propounded by the Service Agent of the Bureau of Service, Interstate Commerce Commission was:

594 "Would you without restriction or reservation permit railroad engines to enter upon the plants or tracks for the purpose of performing all of the switching?"

The answer we made was, "No; such entrance by common carriers' locomotives would have to be in accordance with predetermined agreement clearly setting forth the circumstances regarding entrance of carriers' engines, the service it was to perform, the manner it was to carry on its work and liability features," all of which would have to be passed upon by our general attorney and executives in the regular manner.

Q. Now, assuming that there is an obligation upon the part of the carriers to do this spotting in your plant, you would not permit them to come in there tomorrow, for example, and fulfill what you

term the legal obligation, without first entering into some agreement formulated by your legal department, and probably the legal department of the carriers; is that true?

A. No, sir; we would not permit such rapid action as that.

By Mr. MILLING (Counsel for Standard Oil Company of Louisiana):

Q. Mr. Flynn, in answer to the question just propounded, supposing that the carrier asserted the right to do this switching instead of making an allowance, would we not necessarily have to allow that to be done under the same terms and conditions as it is done on ordinary spur tracks or in other plants?

A. Yes, sir.

595 Q. Aren't there rules and regulations provided by the various state commissions and the Interstate Commerce (fol. A-860) Commission for the doing of that, performing of that service?

A. Yes, sir.

By Director BARTEL:

Q. Do you know who assumes the liability under the side track agreements of carriers?

A. Under the standard form of side track agreement the industry has been required to assume every possible liability, even for the carriers' negligence. That is not the case with the Standard Oil Company of Louisiana.

Q. So that you would not be willing to accept the ordinary side track agreement, liability clauses?

A. Our chief law officer has ruled that our company will assume only those obligations and liabilities under common law, assuming such liability as we are responsible for, and expecting the carrier to be responsible for such damage to property or persons as it is responsible for.

Q. Now in answer to the question from your counsel you said you would assume the same responsibility as the ordinary side track shipper did, which would be under the ordinary side track agreement. Now in answer to my question you say no. Now what is the fact?

A. The fact of the matter, Mr. Director, is that there are literally thousands upon thousands of industries in this country receiving side track service that have no agreement whatsoever with the carriers. There are others who have signed the side track agreement and assumed such liability. At the time I——

Q. Well, I take it, then, Mr. Flynn, that you would only
596 permit the carriers to enter your plant upon such conditions as you might propose; is that true?

A. Not directly answering that question, with your kind permission, may I answer our attorney's question in that matter? I did not embrace the liability feature in my reply, but took his question

to mean the physical conditions connected with spotting and pulling a car. The liability feature is one which is a matter entirely for the law officers of our company (p. 5207).

We do have contracts with railroads for spur track service that do not impose a liability clause. The assumption of liability is a matter of negotiation between industry and the railroad. There is no legal obligation upon us to assume that liability; that is the opinion of our law department (p. 5208).

W. W. CUNNINGHAM, Trainmaster, Illinois Central, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5209):

DIRECT EXAMINATION

I am trainmaster, Vicksburg District, Illinois Central Railroad, and have held that position since July 14, 1926. During that period the terminal service rendered in reaching the plant of the Standard Oil Company at Baton Rouge has been under my jurisdiction. I am very well acquainted with the Illinois Central tracks, and at one time I was over the tracks of the Standard Oil Company. That was at the time when we made the cost study. I am not too familiar with their plant operations since my experience extends only to the point of interchange.

597 As to whether the Illinois Central could render the same service with its own power without interference or delays—I don't think there is any service in the transportation scheme that we couldn't perform. I would hate to think that the Illinois Central couldn't perform any service that was required. True enough, the Standard Oil Company has always performed its own service, and we have never had an opportunity. It might be necessary to make slight adjustments of the tracks and there might be some minor delays as stated by Mr. Flynn. There probably would be some delay to our power and there might be some delay to the plant, but I imagine that happens with their own equipment and power in handling the switching now.

If the Illinois Central were required to switch the plant it would be necessary to assign one or more engines there at all times. I don't think a plant of that size could be efficiently operated without an engine there all the time (p. 5210).

598 A. Well, cars arrive, of course, in various trains in our train yard, and normally we assemble those cars and deliver them on our interchange track to them, if possible before 7:00 a. m. daily. We receive those cars back on the interchange track at whatever hour or time they are delivered to us.

Q. Is that done by your switch engine?

A. Our switch engine; yes, sir.

Q. That switch engine serves other industries in that general——

A. Well, yes; in that territory.

Q. Not assigned exclusively to the Standard Oil?

A. Oh, no.

Q. And the record of delay and curvature of the track, and so forth, do you know any reason why the Illinois Central power could not enter upon the plant track and perform the spotting service?

A. Well, as I stated, there might be some adjustment that would be necessary there so far as the curves are concerned.

Q. On the plant tracks?

A. Yes, sir. Mr. Flynn testified that he had some twenty-three and four degree curves. He said he would adjust those if necessary for us to switch. Of course, with the type power that we are using in that switching territory now, about a 15 or 16 degree curve is about the maximum degree that we use. Of course, some points in that switching territory where the degree of curvature is greater we hold on the cars to make it go.

599 Q. What would you say as to the effectiveness of the service if it was performed by both railroads serving that plant, both engines entering the plant?

A. Well, I consider it very impractical for both engines to serve the plant at the same time; that is just my opinion, however.

Q. Impractical from what standpoint?

A. Well, from an operating standpoint.

Q. The factor of interference?

A. Necessarily so (5211).

A. Well, surely it would be a delay. Of course you could designate some one man to state just where the switching should be done and at the hour, give, say the L. & A. Railroad a specific time to switch certain tracks, and the Y. & M. V. It probably could be worked out that way satisfactory, but just to say "Go in there and switch it, indiscriminately," without anybody dictating as to how it should or when it should be done, of course it could not be done satisfactorily (5212).

600 Otherwise, there surely would be delays between the industrial engines and the railroad engines in waiting on each other to get access to a particular track.

If the Illinois Central assigned an engine to switch the plant it would cost the railroad more than the allowance paid to the industry. If both railroads undertook to switch the plant the cost would be practically twice as much as it is costing to have the Standard Oil Company do the work with one engine.

I think the scale of wages as paid by the Standard Oil Company is about on a par with the Illinois Central. I think the Oil Company works one more man on the crew than we do.

Whether or not the Illinois Central could perform the switching for less than the cost to the industry, notwithstanding that the wages of the Oil Company crew is in excess of the wages paid by the railroad—I wouldn't recommend our engine doing it without three helpers and a foreman to the crew, and that is what the Oil Company uses. That is for the reason of the curvatures, and you must take

into consideration that you are switching a highly explosive commodity, and that certain locations in the refinery are very hazardous and if an accident should happen it would be very costly (p. 5213).

601 Q. Do you regard the service in the plant, if you were called upon to do it, in excess of an ordinary team track delivery?

A. Well, of course it is—according to what interpretation you put on team track delivery.

Q. Do you have to have extra men on your engine to switch an ordinary team track?

A. Well, I use four men on a local.

Q. I am talking about a switch engine in the terminal.

A. I am using the same identical number of men on the switch engine I use at Good Hope to switch in their oil refinery.

Q. And how many men do you use on an ordinary team track?

A. Foreman and two helpers.

Q. How many would you have to use at the Standard Oil plant?

A. I would recommend a Foreman and three helpers.

Q. And that is because of the curvature and the hazard involved?

A. Yes, sir.

Q. Would you regard that then as the equivalent of an ordinary spur track or team track delivery?

A. No; I consider a difference there, of course.

Q. What kind of engine does the Standard Oil use in its plant, do you know?

A. Well, they have—They are either built by the American Locomotive Works, I am not sure, but they are one of the best type engines I ever saw for that particular type of work.

Q. Oil burner or coal burner?

A. Oil burner, saddle-back engine.

Q. In your opinion, would it be safe for a coal burner to enter the plant?

A. Well, now, that is something I couldn't try to qualify on.

602 Q. If you were running an engine would you want to run a coal burner in the plant yourself?

A. Well, I will be very honest with your, if they told me I could put her in there I would certainly put it in whether she burned coal or gasoline or whatever it was. Of course, I think the gentlemen from Destrehan testified, and I know that to be a fact, we did loan them some engines, and they put arrestors on the stacks, and I imagine that the Standard would demand the same thing.

By Director BARTEL:

Q. What is the greatest curvatures over which your engines operate in the terminals in which you have anything to do with?

A. We have a 16 degree curve.

Q. Where?

A. At Louisiana Chemical, I think it is, and 18 degree curve at Tours & Baum, but we use, of course, the small type locomotive.

In the Baton Rouge yard we have three types locomotives, the 200 class switch engine, the 900, and the 3,500.

Q. If you were called upon to switch the Standard Oil plant what kind of engine would you use?

A. I would try my best to get the same type they had. The Standard Oil Company has a very efficient set of engineers, and I am sure they purchased and have the best locomotive for their work in the country.

Q. That may be, but if you were called upon to switch the plant I assume you would have to do it with what you have. Now what would you use?

A. I don't know now; sir. Certain parts of their plant we could use any type we have. There are other parts we would have to use a smaller locomotive.

603 Q. Well, if you switched the entire plant I assume you would have to place a locomotive that would travel all over the plant?

A. That would be a 200 class switch engine, the smaller type.

Q. Do you have those available?

A. Yes, sir.

Q. And they negotiate all the curves in the plant?

A. That I couldn't testify because I don't think they have had an opportunity, and we have on some few occasions leased engines from the Standard Oil.

Q. Well, you don't know whether if you were called upon to switch the plant, whether you could actually do it?

A. I couldn't say that feature. That is something you would have to give a practical test, but we have on some occasions at least leased engine equipment to the Standard (5215). Whether they went all over the plant or parts of the plant, I don't know.

Q. But you are not willing to testify whether if you were called on to switch the plant the power you have available would be able to go in and negotiate the curves and switch the plant?

A. I couldn't say, of course; I don't know.

Q. Is there anyone that would be able to tell that other than yourself? I mean, would you be the one more familiar with that?

A. I think I am the one more familiar with it; yes, sir.

Q. And you have not familiarized yourself with the situation?

A. No, sir; you see, ever since the construction of the Standard Oil, no one has switched the plant but themselves; it has been under their own supervision.

604 Q. But I am assuming now that the Standard Oil takes the position that is your obligation and that they are relieving you of that obligation by doing it themselves and your paying them an allowance. I was wondering if you or anybody else made a study to find out if you could actually switch the plant or not?

A. Well, I have not made a study; no, sir.

Q. No one else on your line that you know of?

A. Not that I have been advised of.

Q. Did you hear the questions put to Mr. Flynn in reference to the classification of the empties?

A. Yes, sir.

Q. The Illinois Central is required to serve them in the manner that the industrial engine is now serving them.

A. Yes, sir.

Q. As described by Mr. Flynn. Would you regard that in the nature of a service in the nature of an addition to the ordinary service you render in delivering carload freight, or would you regard it as some special requirement needed to serve that particular industry?

A. Well, I will have to be very honest with you. I think it would be just about the service we would give anybody. In other words, we wouldn't put a flat car at a sawmill where a box car was desired, no more than we would put a coal car at a loading rack where a kerosene car was necessary. We would put them in, of course, on the tracks designated.

Q. There are some plants along your line of railroad, perhaps beyond your jurisdiction, engaged in the oil business, which you do serve other than this Standard Oil plant?

A. Yes, sir.

Q. Where their industrial tracks perhaps are not as extensive as these?

A. Of course the Standard is the biggest in the world.

Q. Have you any in mind in your jurisdiction?

605 A. We switch the plant at Norco?

Q. Norco?

A. That is the Shell Petroleum.

A. And you classify the empty cars there?

A. Well, we do so far as spotting them is concerned; yes, sir; spot the empties and get out the loads. We put the clean cars on the tracks they want them on, the asphalt cars on the other tracks.

Director BARTEL. You take those cars from the storage track on car orders, don't you, and place them?

The WITNESS. We deliver them as they come in; they have an engine that does all around intraplant switching.

Director BARTEL. Do they get an allowance?

The WITNESS. No, no.

Director BARTEL. Why not?

The WITNESS. They do the intraplant. We do our own switching.

Director BARTEL. That is, you switch the plant direct and spot the cars for the intraplant?

The WITNESS. Yes, sir.

Q. In its physical aspects you see no difference in the service, I take it, performed for the plant at Norco than you would have to perform at the plant of the Standard as far as the interchange of cars is concerned and the placing of them in accessible positions for

loading and unloading in and upon the industrial track (5217)?

A. Well, of course, I am a good deal more familiar with the physical part of Norco than I am Standard, because we switch them all the time, but I think it is practically the same, along the
606 same lines, anyway. As stated to you in the beginning, there may be some adjustments for us to switch the Standard Oil that they would have to do, might be some we would had to do. I don't know; couldn't say (5218).

CROSS EXAMINATION

We handle the cars for the N. O. T. & M. destined to the Standard Oil Company at Baton Rouge. We get the cars from the N. O. T. & M., from the transfer boat across the river, and perform all switching for them on this side of the river. The N. O. T. & M. pay us a switching charge and in addition make an allowance to the Standard Oil Company (p. 5219).

607 C. D. LUNDAY, Vice President, Louisiana & Arkansas Railway was recalled as a witness, having been previously sworn, testified further as follows (Vol. 5, p. 5223):

DIRECT EXAMINATION

Q. Did you participate in any of the consideration given by the operating officers of the different railroads that serve the Standard Oil plant at Baton Rouge concerning the terminal services rendered on those tracks or the advisability of the carriers undertaking to do that service in lieu of having the industry do it under an allowance?

A. That arrangement was made before we had any connection whatever with the L. R. & N.

Q. You just followed what you found there; is that it?

A. Followed what we found there.

Q. And served the Standard Oil plant as they wished to be served?

A. With their engines. We have never inquired into it.

Q. I am speaking about your service.

A. Yes.

Q. Your service of the plant in taking up the cars outbound and making delivery of the cars inbound, you placed them where the Standard Oil Company wanted them placed?

A. We have an interchange track and we bunch everything that comes in and shift it to that track and they thresh it out themselves. They bring everything out to us in the evening and we get them with our switch engine and work them out as to destination and switch them to our trains.

Q. Have you had occasion to ascertain and determine whether the spotting service for the plant at Baton Rouge, as required by the industry could be performed by your company if called upon to do it? That has reference to the physical aspects to it?

A. I have never been over the tracks of the Standard Oil Company.

608 Q. Then you don't know?

A. I don't know personally about it.

Q. Do you know whether the cost to the L. & A. of performing that service if it was required to perform it would be any more or less than it now pays to the industry?

A. I think it would be more. I am judging that by the fact that we switch a similar refinery in Shreveport, and it is joint between the L. & A. and the Cotton Belt. The L. & A. does all the work, therefore we have to keep a very accurate check of the cost, because we bill them on a per car basis, and our cost during the year 1931 was $1.7379 per car.

Q. That was the cost of operating the locomotive itself?

A. Cost of our switching the plant.

Q. Exclusive of any track arrangements, or anything of that kind?

A. It is strictly a transportation cost. $8.00 a day for the locomotive, fuel, oil, and repairs, plus the labor, and it includes the salary of the yardmaster only in supervision, I think of the clerks, because the Cotton Belt kept their own records, therefore we did not include any clerks in that expense.

Director BARTEL. Did you say you had to assign a locomotive to some oil company in Shreveport?

The WITNESS. The engine that goes to work at 6:30 a. m. on that shift, if No. 215 is late, helps put the cars to the house and spot the industry, then goes to the Louisiana Oil Refining Company, places the empties, does what work there is at that industry, then goes to the United States Army Airport and switches that, back to other industries in Bossier City, which is located east of Red River, and if they have a heavy run of oil from the refinery, will bring in what loads are ready. He usually gets back to the yard about—well, from 10:30 to 12:30. We have another shift that goes to work at five o'clock in the afternoon, that goes direct to the refinery and works the racks, then to the Airport for the empties.

609 Director BARTEL. What I had in mind, that engine is not assigned to the industry?

The WITNESS. Oh, no. I was trying to tell you what they did, five or six hours in the morning, and four hours in the afternoon.

610 L. A. DAVID, Assistant General Manager, N. O. T. & M., was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5225):

DIRECT EXAMINATION

I am assistant general manager for the New Orleans, Texas & Mexico Railway (Missouri Pacific Lines), and have held that position since June 1, 1926.

Our rails do not reach the Standard Oil Company's plant. We reach that industry by trackage contract or switching contract with the Y. & M. V.

The N. O. T. & M. Railroad ends on the west bank of the Mississippi River opposite North Baton Rouge or Baton Rouge, at a point called Anchorage. Their equipment, cars, are handled from the west bank of the river to the east bank of the river by the Transfer Boat Walker, and from the east bank of the river to Baton Rouge and North Baton Rouge and points south to New Orleans by the Y. & M. V., under a contract entered into in 1907. In this contract is a provision for switching loads and empties from the incline to Baton Rouge, North Baton Rouge yard, and Baton Rouge yard, the handling of the cars for the N. O. T. & M. for placement at various points in Baton Rouge and North Baton Rouge, as well as for handling their through business to New Orleans. The N. O. T. & M. operates no engines on the east bank of the river, operates no freight crews, train crews, or switch crews, but does operate a passenger crew on each of its four passenger trains from Houston to New Orleans, the trains being handled by the Y. & M. V. engines and engine crews. The freight trains are handled by Y. & M. V. engines and Y. & M. V. engine crews and train crews, and all switching performed in Baton Rouge by the Y. & M. V. engines and switch crews.

611 Under these circumstances, I have had no occasion to inform myself concerning the services rendered at the Baton Rouge plant. I heard Mr. Cunningham's testimony, and my testimony would necessarily have to be the same as his, because the Y. & M. V. does our work. I know of nothing in that connection which has not been told by Mr. Cunningham. I could not add anything to his testimony (5226).

By Director BARTEL:

Q. What do you pay the Illinois Central for handling this stuff across the river for you?

A. We handle it across the river, Mr. Director; we pay them $2.50 a car for switching from the east incline, which belongs to the Y. & M. V., the east bank incline, to Baton Rouge and North Baton Rouge yards and industries.

Q. Is that a published switching charge or some sort of contractual arrangement?

A. It is a contract charge.

Q. Not a tariff charge?

A. No, sir.

Q. Now, could you under that contract, if you were called upon to do so, enter upon and serve the Standard Oil plant?

A. Could not; no, sir.

Q. What do you make the allowance to the Standard Oil Company for?

A. That was the tariff charge after a study made by the Y. & M. V.; in order to handle our business into the plant we had to make the same allowance.

Q. But you have no right of access to the plant under your own power, do you?

612 A. No, sir; do not.

Q. Did you understand the allowance is payment for a service which you are obligated to perform?

A. Yes, sir; it is. We are shown in all of the tariffs and in all of our solicitation of business as a Baton Rouge carrier.

Q. But as I understand, you could not physically serve this plant if you were called upon to do so.

A. Only by contract.

Q. Now, I think your company filed a return to the questionnaire sent out by the Commission in this case and indicated you had no right of access to the plant of the Standard Oil Company. What is the situation in that regard?

A. We had no contract with the Y. & M. V. for use of their tracks between the incline and the Standard Oil Company's tracks.

Q. Have you ever had any understanding with the Standard Oil Company as to whether access to this plant would be permitted your company?

A. No, sir; never talked to them about it (5227).

Q. Have you seen the return to the questionnaire which your company filed in this proceeding?

A. Yes, sir.

Q. Does that not indicate that the Standard Oil has declined to permit you access to its plant?

A. I think it did. I think that answer was made, Question No. 7.

Q. You have no reason to doubt the accuracy of that statement, have you?

A. No (5228).

613 Cross examination by Mr. JONES:

Q. When you answered the Director's question that you couldn't switch traffic or handle traffic to and from the Standard Oil Company you had reference to handling the traffic, the N. O. T. & M. itself performing the service, as I understand you?

A. That is what I was talking about.

Q. Is it correct to state that the contract to which you have referred between the N. O. T. & M. and the Y. & M. V. gives the N. O. T. & M. equal rights and obligations with the Y. & M. V. insofar as the terminal receipt and delivery of freight is concerned at Baton Rouge and North Baton Rouge?

A. It does.

Q. So that if they should be under obligation to perform that service and should undertake to perform that service you could and would arrange to do so through the Y. & M. V.; is that correct?

A. That is what we have done; yes, sir. That is correct (5228).

By Director BARTEL:

Q. Well, does the contract which you have with the Y. & M. V. give you access to the industries served by the Illinois Central?

A. Yes, sir; in Baton Rouge.

Mr. JONES. And New Orleans.

The WITNESS. And New Orleans; but not between (5229).

By Mr. MILLING:

Q. You say the N. O. T. & M. answer to the questionnaire was that the Standard Oil Company had declined to give them entrance into its plant?

614 A. I don't think they answered that they declined to give them. It was the understanding of the N. O. T. & M. that the Standard Oil—the answer to the question was No. 9 instead of No. 7, and refers to three oil companies, the Texas Company, Humble Company, and Standard Oil Company of Louisiana, and the Uvalde—refused to permit entry of the respondents' power for performance of the described service because of the interference by respondents' power with plant operation.

Q. Who answered those questions?

A. They were answered part of them by myself and part by the Traffic Department.

Q. Did you answer that particular question?

A. I couldn't say that I did.

Q. Who did?

A. I couldn't recall right now whether it was answered by the Traffic Department or the Operating Department.

Q. Do you know what the facts are that the answer was predicated upon?

A. By correspondence emanating between the contract road and ourselves.

Q. How long ago?

A. In 1927.

Q. You mean you received a letter from the Standard Oil Company declining to let you enter the plant?

A. No, sir; we don't appear in it at all. As I said before, we have no trackage on that side of the river at all (5229).

Mr. JONES. He said contracting road.

Q. Who did you mean by contracting road?

A. The Y. & M. V.

615 Q. You are answering then that the Standard Oil refused to give the Y. & M. V. Company?

A. Yes, sir.

Q. And never refused your road?

A. We couldn't go in. The Y. & M. V. is our road insofar as handling the Standard Oil Company N. O. T. & M. business is concerned.

Q. Then the answer is predicated upon information which you were supposed to have gotten from the Y. & M. V.?

A. From the road with which we had the contract.
Q. Not from any knowledge of that?
A. Not from the Standard Oil (5230)..

616 J. L. SHEPPARD, General Freight Agent, Illinois Central, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5230):

DIRECT EXAMINATION

619 I have been general freight agent of the Illinois Central System since the 20th day of February 1932. Prior to that time I was general freight agent of the Southern Lines, from June 1, 1926, and prior to that date I was assistant general freight agent of the Southern Lines.

About all I know about the allowance to the Standard Oil Company is what is in the records and what I got from contact with the other offices and by actually publishing the tariff (p. 5231).

W. B. HIGGINS, Traveling Auditor, Illinois Central, was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5231):

DIRECT EXAMINATION

I have been traveling auditor of the Illinois Central Railroad for the past 12 years. The cost study was conducted at the plant of the Standard Oil Company at Baton Rouge, under a formula furnished by the Central Freight Association, from March 11 to the 17th, inclusive, 1927. The freight conductors and yard conductors were assigned to follow each engine and make a detailed record of every move, showing time consumed and number of cars handled, with initials and numbers, from which data distribution was made under my supervision, distributing the time between the plant and railroad and overhead. The total time included in that computation was 19,680 minutes, of which 8,591 minutes were chargeable against the industry. Included within the time charged against the industry there was a total of 638 minutes for respotting cars, and 89 minutes because of the engine being blocked on the interchange track by an L. R. & N. train. There was also 17 min-
620 utes for repairing locomotives; 68 minutes for observing fire drill—the industry has a fire drill every day and the engine had to come to a stop; also, 250 minutes turning in locomotive before end of the shift; 208 minutes on account of derailment of engine; 23 minutes blocked by Y. & M. V. trains on the interchange track; 11 minutes handling Standard Oil tool car; 386 minutes waiting for engine at round house; 2,808 minutes waiting for orders from the Shipping Department; 11 minutes waiting on car inspector to complete inspection of cars; 151 minutes waiting for cars to complete loading; 296 minutes waiting for L. R. & N. connection; 74 minutes waiting for Y. & M. V. connection; 19 minutes for section

foreman preparing track; 594 minutes at the scales weighing loads and empties; 1,176 minutes to and from the scales; 553 minutes at U. T. L. repair shed; and 1,319 minutes at U. T. L. storage yard. This latter time was later conceded as railroad time and taken out of plant time (p. 5233). It covered cars which were first placed by the industrial power on the U. T. L. storage tracks within the plant, and the time of plant locomotive moving the cars from the plant storage yard into the plant was charged to the railroad. It was first charged to the plant. Asked why the change was made—we didn't change it. It was my understanding that they claimed if this U. T. L. Tank Car Company did not have that storage yard at the north end of the Standard Oil plant the railroad company would have to furnish trackage to store these tank cars, and when the Standard Oil Company called for them it would be a railroad liability to move them from the storage yard to the plant of the Oil Company for loading. That is a day to day operation at the plant.

In making a comparison as to railroad cost and cost to the industry, we considered the conditions would have been the same,
621 and we only took the 10,989 minutes that were chargeable to the railroads as a basis for our cost. We assumed that if our engine performed the service we would not have used up the 8,691 minutes in the same manner that the industry engine did.

If the railroads were operating in the plant certain items in the cost study would have been charged against the industry. The industry would have been charged for the intraplant moves, but some of the other items was time the railroads would have to assume. For example, if the railroad while switching the plant ran up on a section foreman repairing the track, and had to stay there until the foreman let it by, that is time that the railroad company would have to assume.

In arriving at the allowance we submitted several figures, and the one that the allowance was based on was Item No. 1, which was the railroad's switching time of 183.15 hours. We took the L. & A. cost, minus time consumed in checking cut on the interchange, plus switching at the U. T. L. storage yard and we used the cost to the L. R. & N., which was figured at $1.53 per loaded car, the L. R. & N. cost being the lowest cost to the industry. The amount finally published was $1.20.

Mr. SHEPPARD. There were certain conferences between the operating people and our company, and I believe Mr. Hattendorf was present, and the $1.20 was agreed upon as the compromise figure, being less than the actual cost.

622 Q. Can you give me some of the details of that comparable with the details of the industry figure (5236)?

A. Yes, sir. Repairs to steam locomotives—this is cost per hour—for the Standard Oil Company was $1.45575; Y. & M. V., $1.37595; L. R. & N., $1.47160. Wages, train, and engine crews, Standard Oil, $5.15509; Y. & M. V., $3.87; L. R. & N., 3.0675. Yardmasters,

Standard Oil, .74470; Y. & M. V., .41774; L. R. & N., .41771; Engine House expense, Standard Oil, .77127; Y. & M. V., .47320; L. R. & N., .47066. Fuel, Standard Oil, 1.39553; Y. & M. V., 1.75797; L. R. & N., 1.69647. Water, Standard Oil, .05034; Y. & M. V., .09169; L. R. & N., .12742. Lubricants, Standard Oil, .03175; Y. & M. V., .02794; L. R. & N., 04901. Other Locomotive Supplies, Standard Oil, .00210; Y. & M. V., .03656; L. R. & N., .04898. Interest, Standard Oil, .16765; Y. & M. V., .07089; L. R. & N., .14538. Depreciation, Standard Oil, .08088; Y. & M. V., 1.02467; L. R. & N., .05178. Total power, Standard Oil, 9.85506; Y. & M. V., 8.14661; L. R. & N., 7.54651.

Q. The Standard Oil cost was higher than the Y. & M. V.?

A. Yes, sir.

Q. Now, included in the items were some that are measured in terms of time, by the hour, cost per hour.

A. Right.

Q. That would not account for the differences similar to the one that was made of the industry cost, where you charged the industry up with certain quantities of time when the industrial engine was devoted to services other than interchanging cars? What I have in mind there is that the two costs are not comparable from that basis, on the same common basis?

A. We figured that it costs so much per hour to operate the engine.

623 Q. Yes.

A. We arrived at the time chargeable to the railroad companies in minutes, then reduced to hours by multiplying those hours by the cost of operating an engine per hour gives you the time expense chargeable to the railroad; divided by the number of loaded cars interchanged gave us the average cost per car.

Q. Average cost per car?

A. Yes, sir.

Q. Now let's have that figure?

A. The Standard Oil Company was $2.00; Y. & M. V., $1.65, and the L. R. & N., $1.53 (5237).

Q. Have you got the per hour cost there applied against the time devoted by the industry engine in performing the interchange service with the 8,691 minutes out, for example?

A. Yes; I think I have got it in the work papers here.

Q. I don't want you to make mathematical calculations.

A. It won't take a minute. We have 10,989 minutes, I have got it here. It is 199.73 hours charged to the railroad at a cost of 7.54651.

Q. That is the railroad cost?

A. That is the railroad cost.

Q. Now have you got the number of cars that were interchanged?

A. 984 (5238).

This cost study is made under the C. F. A. formula.

624 Mr. SHEPARD. Our obligation would be to make the delivery to the industry. Whatever obstacles we incur in making that delivery would be our disability which we would have to stand.

If the Illinois Central were switching the plant—whether the movement of empty cars from the U. T. L. storage track to points within the plant for loading would be considered a second movement for which a charge should be made—I don't think we should make such a charge. In other words, if we didn't have to bring the cars from that storage yard we would probably have to bring them from our own yard, and it doesn't seem to me to be properly chargeable to the industry (p. 5240).

625 P. H. COON, Assistant General Freight Agent, N. O. T. & M., was called as a witness, being duly sworn, testified as follows (Vol. 5, p. 5241):

Reference has been made to an agreement between the Illinois Central and the N. O. T. & M., at Baton Rouge, under which we pay them $2.50 per car. This includes the service to the various industries served by the Illinois Central.

Q. If the Illinois Central were called upon to serve the plant of the Standard Oil Company direct would that $2.50 charge include the spotting service within that plant for your company?

A. I don't think so.

Q. Why not?

A. That is a service which is in addition to the service which is being performed by the Y. & M. V. at the time of this contract.

Q. I am assuming it is an obligation of the Y. & M. V. to serve the Standard Oil plant, and I want to find out now whether under the contract you have with them, whether they would be called upon for the $2.50 to also perform the spotting service at the Standard Oil plant for your company?

A. I do not so understand.

Mr. JONES. Well, there is a specific provision in the contract on that. It applies from the incline to the interchange of the Standard Oil Company, doesn't it?

The WITNESS. Well, it is not specific in the contract.

Q. Well, I understood you to say your contract with the Illinois Central contemplated the placement by the Illinois Central of cars within the various plants at Baton Rouge which the Illinois Central serves?

626 A. Yes, sir.

Q. If the Illinois Central was obligated to serve the Standard Oil plant would your contract with the Illinois Central obligate the Illinois Central to place the cars for you in that plant?

A. That is a question—I mean—we understood this. May I explain it this way?

Q. Well, of course, the contract is not in the record. I assume that will be a copy of it.

A. It has been in the record about 20 times.

Q. What I am trying to find out is why do your people pay the allowance?

A. The allowance paid by the N. O. T. & M. is considered in the same light that the contract requires us to absorb switching at New Orleans of the L. & N. for the Y. & M. V. (5242).

Q. Well, coming to this specific contract, assuming the contract merely takes you to the interchange track of the Standard Oil, that is as far as the Illinois Central would be obligated to perform the service for you. What obligation would there be for you to go beyond that point under any consideration?

A. Only through an arrangement with the Y. & M. V.

Q. And you do not have that arrangement now?

A. No, sir.

Q. How then can you say that there is an obligation upon your part to serve the plant of the Standard Oil, for which you are employing the Standard Oil in lieu, and giving them an allowance?

A. Well, as a participating carrier in Baton Rouge, we want to participate in that business.

627 Q. Yes; but you can't physically serve the plant at the present time, can you?

A. Through a contractual arrangement we would. We would have to make additional arrangements to serve that plant physically.

Q. Well, I am speaking at the present time, have you any arrangement to serve the plant of the Standard Oil Company?

A. No, sir. (5243).

Q. What do you make them an allowance for? In other words, you are paying the allowance in lieu of a service which you are obligated to perform, are you not?

A. Yes; but we consider the Y. & M. V. as a part of our railroad, just the same as though we ran our own trains over there.

Q. How far?

A. From the east bank of the river to North Baton Rouge.

Q. That would not include the Standard Oil?

A. To the interchange with the Standard Oil.

Q. How would you get beyond that interchange?

A. We would have to go beyond there with the Y. & M. V.

Q. But you have no contractual arrangement with the I. C. or Y. & M. V. whereby you can at the present time, do you?

A. This prese[illegible] $2.50 charge would not cover it; no, sir.

Q. And you h[illegible]rrangement with the Y. & M. V. under which you could serve t[illegible]andard Oil tracks?

A. No, sir.

Q. So that if you were called upon to do it yourself instead of paying the allowance you couldn't do it (5243)?

628 A. We would have to contract with the Y. & M. V. to do it for us.

Q. But as it now stands you have no such right, or you couldn't perform the service.

A. No, sir (5244).

CROSS EXAMINATION

Under our contract with the Y. & M. V. we have equal terminal rights with that carrier in and out of the industries served or reached by it at Baton Rouge or New Orleans. Our rates apply from Baton Rouge to all points within the switching district at Baton Rouge, and the same is true at New Orleans. If it is a terminal obligation of the Y. & M. V. to switch traffic to and from the Standard Oil Company, then under our contract with the carrier, it is an obligation resting on us, under the tariff to also serve the Standard Oil Company. The contract was entered into in 1907, and our basis of compensation to the Illinois Central was worked out for the particular service performed by the Y. & M. V. for our account. At that time the Y. & M. V. was not switching traffic for us to points within the Standard Oil Company's properties, so that the compensation only covered services performed by the Y. & M. V. for us at that time.

A contract between the Y. & M. V. Railroad Company, Illinois Central Railway, and the New Orleans, Texas & Mexico Railroad Company, entitled "Traffic Agreement," dated June 1, 1916, was received in evidence and marked "Commission's Exhibit No. 39, Witness Coon" (p. 5248).

Mr. HAGGERTY. Mr. Director, before you adjourn, I have in my possession copies of certain letters exchanged between officers of the Illinois Central, some between officers of the Illinois Central
629 and the Standard Oil Company, all of which go to show negotiations that led up to the present day manner of handling the terminal Services at the Standard Oil plant at Baton Rouge. I don't know that they contain anything much different than we already have in the record, although they do go somewhat in greater detail. Now I had not intended to ask that these be put in evidence, but the Illinois Central have here as an operating witness Mr. Cunningham, who is not sufficiently—as well informed concerning these negotiations as some other officers of that company. I would like to offer these copies of letters in evidence subject to verification by anyone that cares to verify them from examination of the original files, subject of course to any objection that may be made by counsel. I understand now you want to give up this room under some engagement or other, and I thought perhaps these copies might be left with counsel tonight in order that they may look them over and see if they have any objection to them.

Director BARTEL. We will rule on that tomorrow morning after the counsel has had an opportunity to go into those (5247).

630 PAN AMERICAN PETROLEUM COMPANY

(Hearing held at New Orleans, May 11, 1932.)

J. E. MONROE, Assistant Traffic Manager, Pan American Petroleum Company, testified as follows (p. 5142):

DIRECT EXAMINATION

A map of the industrial layout was received in evidence and marked "Commission's Exhibit No. A–35, Witness Monroe."

Our refinery was built during 1914 and 1915. The tracks were built by the Y. & M. V. Railroad Company for our account. That line delivers empties on what we term the interchange track, designated on the map as R. We classify the cars as to capacities and classes of equipment, such as asphalt cars, clean cars, etc., and then place them at the various loading racks of which we have three or four. For instance, some may be placed at the asphalt loading rack and some at the refined oil loading rack, and after loading, the cars are pulled to the interchange track and there placed for pulling by the Y. & M. V. train, which usually pulls that track between four and five o'clock in the afternoon (p. 5143).

The loading points designed on Exhibit A–35, A, B, C, D, are in reality one point where there is a loading rack equipped to load kerosene, blue gasoline, or white gasoline. Those tracks are equipped with four loading spouts and will load the car regardless of how it is placed along the rack. It is not necessary to have a car which you wish to load with blue gasoline, for instance, directly opposite the blue gas tank, but it can be loaded any place within that space which measures 150 to 200 feet (p. 5144).

There is also a loading rack beyond these tracks for aviation gasoline, but we are not handling that grade at this refinery at
631 the present time. The track designated on Exhibit A–35 as J is the asphalt, fuel oil, and gas oil loading rack, where there are two tracks, and the facilities there are similar in that cars may be spotted at any location that happens to be vacated within a given radius for the loading of oil (p. 5144).

The track designated by the letter O on Exhibit A–35, paralleling the Y. & M. V. tracks, is where we switch tank cars for repairs, overhauling, painting, etc. The tariffs of the carriers provide that tank cars will be switched to repair shops by the carriers without cost and, of course, that is a service that we perform for the carriers. However, our allowance at Destrehen is not on a per car basis but is based on per loaded car in and out.

A statement showing the different loading and unloading locations within the plant was received in evidence and marked "Commission's Exhibit A–36, Witness Monroe."

Exhibit A–36 shows the designation and letters A to U, inclusive, of the several different loading and unloading points within the

plant and this list identifying those locations along with the print (Exhibit A–35) gives us the descriptive locations. The Exhibit A–36 is misleading to a certain extent as there are not as many points of placement as there indicated. A, B, C, and D, for example, are one point (p. 5145).

We first received an allowance of 90 cents on all carload traffic, both inbound and outbound, effective December 10, 1928. A cost study was made in August 1928.

Prior to December 10, 1928, we handled the service. The Y. & M. V. may have done certain switching in the plant from time to time on rare occasions. I can go back to 1919 from infor-
632 mation I have received. I was not connected with the company prior to March 19, 1926. I do not know that the Illinois Central ever refused to perform that service. We have rented locomotives from them while ours was undergoing repairs. We considered having the Illinois Central perform the service at one time but dropped the matter. I do not know why, except, I would imagine, we would prefer to do it, just the general operations of the plant and so forth. I do not know that there would be any objection to having the Illinois Central perform this service, but we have all the facilities there and we have been doing it all these years as far back as 1919, to my knowledge, and we may have been doing it from 1914–1915 on.

Q. Well, if the Illinois Central were to undertake to do the service at the present time would you let them do it?

A. In preference to the allowance?

Q. Yes.

A. From a monetary standpoint I would say yes, because it costs us considerably more than what we receive. I will give you this as an example. For 1931 we received from the Y. & M. V. Railroad $5,012.10, whereas our costs in connection with that particular service was $12,368.02, on costs which are considered under the formula which the Illinois Central people used in preparing the cost study those figures would be only slightly less, which would be $11,624.09. That is the total of the figures or the costs which under the cost formula they permit to go into the switching cost study. In there are other items such as labor inspectors, checkers, general labor, telephone and telegraph, which under the formula we can't throw into our cost figures (p. 5148).

633 We have 3.48 miles of tracks within the refinery proper and some additional track. I would not say the service of switching this plant is complicated. We have the same situation at our bulk stations where we have a loading spout and the business is handled the same way. As a matter of fact we use team tracks at some places. The maximum curvature of the tracks as shown on Exhibit A–35 is 20 degrees. A switch engine can safely negotiate a 20 degree curve. The locomotive used in our plant is classed as a 40-ton locomotive, but at times we have rented locomotives from the Y. & M. V. while

ours were undergoing repairs. These were No. 119, an 060 type with 84,000 pounds weight on the drivers; No. 1900, similar type of 118,900 pounds, and No. 3320 an 060 type having 109,455 pounds weight on the drivers. No. 119 was in service from February 16, 1928, to February 19, 1928. Locomotive No. 198 was in service from October 6, 1928, to October 26, 1928. Locomotive No. 3320 was in service from January 14, 1929, to January 23, 1929. These locomotives were rented from the Y. & M. V. on a per day basis (p. 5148).

I did not call upon the Illinois Central to perform the spotting rather than renting a locomotive from them because we have always done our own switching. I just followed the general plan and practice we always had. We put spark arrestors on the stacks of the Y. & M. V. locomotives because they use coal burners and we use oil burners.

Q. Why do you have locomotives in your plant?

A. We always have.

Q. Why do you do that? Why not have the carriers do the spotting?

634 A. I couldn't answer that. To me it would seem just good business and economically sound for us to do it if we could do it cheaper than the Y. & M. V. Railroad.

Q. What difference does it make to you how cheap it was if they were going to do it for you?

A. That answers itself. It is a question of putting the buck on to someone else.

Q. Well, have you the locomotive on some convenience of the plant?

A. We had the locomotive from the very beginning.

Q. Why did you have the locomotive? Was it for your convenience or because you wanted to relieve the carriers of switching your plant?

A. I don't think we are philanthropic in that respect. I really couldn't say why we started switching the plant with our own locomotive.

Q. You are not doing it to relieve the carrier of any responsibility?

A. Oh, I wouldn't say that.

Q. You did it for a long time without any allowance, didn't you?

A. That is right; which I think was wrong.

Q. Why?

A. I believe if we do any service for the railroad they should pay for it, and if that service is included in the line haul rate I think we are entitled to an allowance on it.

Q. Did you ever ask the railroad to do it or would you let them do it if they wanted to?

A. I don't know offhand if we would have any objection to them doing it; as a matter of fact, I think it would be cheaper for us.

635 Q. Would there be any fear of fire hazard in letting the railroad engines come into the plant?

A. Not as long as they had spark arrestors on; there would be a potential hazard as long as they didn't have spark arrestors on, but with locomotives in the plant with spark arrestors, I would say it would not be dangerous.

Q. Would it be necessary for the Illinois Central to equip their locomotives any certain way in order to switch the plant?

A. Just put spark arrestors on; it slips over the stack.

At the present time we have very little intraplant service. During 1925 to 1927 we had considerable intraplant service insofar as concerns packing goods, because at that time we handled a lot of export ethyl gas to Germany. Since that time our plant at Hamburg has been completed and we supply European trade from that plant (p. 5150).

As to whether we could operate our plant as efficiently with the railroad performing the switching service, as we can do it ourselves—we might have to make certain changes in the operations at the plant. For instance, we may have to load certain cars at certain times; that is, classes of equipment. That would mean we would have to give the Illinois Central a list the night before, or in the morning, of cars we wanted placed. With respect to box cars, we might need 36-foot cars, or 40-foot cars, or 50-foot cars; or we might need a flat car or a gondola. With tank cars, the situation is the same, we may need 6,000 gallon cars, or 7,000 gallon cars, or 8,000 gallon cars, or 10,000 gallon cars. Then, too, we have compartment cars, dirty and clean cars. We would have to tell the Illinois Central that we wanted so many of the 6,000, 7,000, or 10,000 gallon cars switched to loading rack, designated on Exhibit A-35 as A, B, C, and

636 D; and we would want so many asphalt cars of ten and eight thousand gallon capacity switched to track J. If the railroad company detects any bad order cars they placard those cars. If they are detected after they reach our industry we shift those cars into our shop.

If the carrier were required to switch our plant we would have to change our method of handling, and I think it would be a little cumbersome.

As to whether it would interfere in any particular with the industrial operations to the extent of making it more costly to the industry than under the present arrangement, to have the Illinois Central perform the spotting at its convenience—our plant operates eight hours a day and if the Y. & M. V. would place the cars in the morning or late in the evening, so that we could start a day at some given time, I believe it could be done. It would mean this, that we would give the carrier instructions to place certain cars, by number, rather than by classes of equipment. Taking the cost of performing the switching into consideration, we have never received anything from

the railroad comparable with our actual cost, and for that reason we would prefer to have the railroad do the switching.

I don't know of any physical condition with respect to our lay out of track within our industry that would prohibit the railroad from entering the plant with the size of locomotives we have rented from the carrier. I don't think our plant tracks would accommodate the exceedingly large road engines used by the Illinois Central today. At the time the Y. & M. V. built the tracks at our refinery they would accommodate the locomotives used by the carrier at that time. I don't think the Illinois Central would attempt to enter our plant with these large locomotives where we have 60 and 75 pound rails and I don't think we would want them in our plant if they did, but with the average locomotive, such as those used at
637 our plants at Jacksonville and Baltimore, they could switch our plant.

We operate one 40-ton locomotive at our plant and one reason why the allowance is so low is that so much idle time is chargeable to the industry (p. 5155).

If the Illinois Central undertook to perform the spotting service—the Illinois Central switch engine would have to drill out among the empties the particular kind of empties identified by number in accordance with the industry's switch list and assemble those cars before they could be spotted. That is, I would say, they would classify those cars some place just like we try to classify them, separating the clean cars from the dirty cars (p. 5160).

(Fol. A–791.) Q. Can you tell us something of the negotiations or considerations that led up to the application by your company for an allowance in the light of the fact that for a great number of years the company itself was performing the service? Can you tell us about that, how you came to make the allowance, and what consideration was behind it?

A. I came with the Mexican Petroleum Corporation from the Southern Railway in March 1926, and at that time we were doing a very heavy business. The oil industry was in a lot better shape than it was today, and we make an investigation of probably changing our tracks up there or making certain enlargements to them. For instance, we had what we call the Smackover tracks, where this crude oil unloading track is; we thought probably we would tie them in. Those tracks were, in other words, tied up, Track S with Track—with that part of the track designated as T, or in the vicinity thereof, and we saw what our switching was costing us, so finally it came down to a point, we discussed it with Mr. Wood, who is our vice president and traffic manager, and the gentleman I report to, and we gave consideration to asking the Y. & M. V. Rail-
638 road for a switching allowance. Well, there was correspondence exchanged back and forth from time to time and finally a cost study, the first cost study I recall was made, I think it was the first part of August 1927, and it was based on the formula which

the Illinois Central Railroad claimed they had used over their entire system, (fol. A–792) so their Accounting Crew, or whoever it was, who had charge of making the study, came into the plant for a week, and they kept a detail record of every move of the locomotive throughout the entire time of this particular week, and figures, they called on us for our books and so forth, to get our figures off the books, the value of the locomotive and steel, and so forth and so on. After this cost study was made we didn't hear from the Illinois Central for some time, or I think it was due to the fact that they had to give it final consideration, and I kept pressing the Traffic Department. who were the people I originally dealt with, to have this study made. Mr. Hattendorf, then at Memphis, now at Chicago, told me that Mr. Moss, the superintendent, was handled it, and finally they called for a conference. They did not mention the figure to us, and the figure was such that we were not satisfied, and finally it ended up by us having a conference at Memphis in Mr. Moss's office. At this conference was Mr. Blake, who was then in charge of our Shipping Department at the refinery, and he handled the details of the switching study under me, and Mr. Higgins, who had charge of the Illinois Central crew that made the switching study, and Mr. Moss and Mr. Hattendorf and myself, and there was considerable dispute about certain items. For instance, they had the entrance to our plant blocked, as I recall, by unloading a car of gravel for the Highway Commission; the railroad placed the car there and it was not consigned to (fol. A–793) us; that had that thrown in to "Plant delays"; in other words, it wasn't
639 any delay over which they were responsible for. As a matter of fact it wasn't a delay we were responsible for.

Q. I understood you to say you were the moving spirit when you went there in 1926 you looked over this switching situation and you found that some of the tracks ought to be moved or had to be provided with more tracks, then you inquired into the cost of switching and found out it was quite substantial?

A. That is what brought it to my attention, because at that time we were doing a large business.

Q. Now do you know anything about the cost in preceding years?

(Fol. A–794.) A. No, because I just went with the company in 1926, went with them in March 1926, and as I recall this question came up about the latter part of 1926.

Q. And that must have been based on what your observation was of the then cost without regard to what it had been before?

A. That is right. As a matter of fact, I did not have the cost figures before me until I sent a man up there to investigate the traffic lay out of the plant.

Q. Was that the only consideration you had in mind at the time you recommended that the application be made to the Illinois Central for an allowance?

A. What do you mean by only consideration?

Q. Well, did the fact that some other oil industries elsewhere——

A. Well, we used that as a justification.

Q. Oh, you did?

A. In other words, we took this position, that here we were performing a service that the carrier should perform and that service—the cost of that service included in the line haul rate.

640 Q. What led you to believe you were performing a service that the carrier should perform?

A. Because at all our other terminals, for instance the refinery at Savannah, our terminal at Jacksonville, our terminal at Tampa, our terminal at Memphis, Tennessee, our refinery at Baltimore, the service is all performed by the railroad.

(Fol. A–795.) Q. You assumed from that that the carrier was in duty bound to perform that service?

A. That is right, and then of course when this cost formula was given to us to go by, why, then we had to take and follow that cost formula literally and the moves had to be considered as a regular placement move that a railroad would make in ordinary switching service.

Q. Did you also have in mind or make use of it as a justification the fact that the allowance was being made at other oil industries or other industries by the railroads for the same class of service?

A. Now I did state this to Mr. Moss in Memphis, that I did not have the authority to tell him to switch the plant or that we would not definitely accept this allowance. I did state to him that I reported to my vice president and that in the event that we decided not to switch the plant but to have the Y. & M. V. Railroad switch it, why, naturally we would expect service that would be non-discriminatory, which I had every reason to believe the Illinois Central would give us.

Q. Well, we can understand from your answers that prior to 1926 the industry either did not wish to have the Illinois Central enter its plant and perform the service or else the industry at that time was not of the impression that it was the duty of the Illinois Central to enter the plant or perform the service?

(Fol. A–796.) A. I am inclined to believe probably the service they were performing for the railroad was overlooked.

641 Q. You think the plant just overlooked what it thinks was its rights?

A. I am inclined to think so, because it was never mentioned to me when I first went with the company. In 1926 we had this big expansion program in the south, and we were working day and night, and of course it was after that all these things came to our attention.

Director BARTEL. How many switchings a day would you require at your plant in normal operation?

A. I would say probably two switches (p. 5164).

F. W. GRAY, Superintendent, was called as a witness, and being duly sworn, testified as follows (Vol. 5, p. 5164):

DIRECT EXAMINATION

I am superintendent of the Destrehan Refinery of the Pan American Petroleum Company, formerly the Mexican Petroleum Company at Destrehan, La. I have jurisdiction over the operation of the industrial tracks within the refinery and the terminal services performed by our engine. I have been superintendent for the past three years. We have had the same locomotive, about 40 or 45 tons, for about five or six years. Prior to that time we had a gasoline locomotive. I have been with the refinery for about 15 years, and prior to becomining superintendent I was assistant superintendent, general plant foreman and served in various other capacities. I have been in charge of the terminal services for about five years, and during that period I have never had under consideration the spotting of cars by the Illinois Central. That question never came up to me. We go out on the interchange and bring in empties and spot them around various places where they are loaded and they switch them out again. If during the course of handling they find any in bad order they cut them out and put them in the shop. The necessary number of trips for the plant power to make to and from the interchange track during the day depends upon the orders
642 received from the Shipping Department by the switch foreman. He may go out and get three or four cars, or he may go out and get one car. The switch foreman makes as many trips to the interchange track as often as he is called upon to do so. In the morning he will spot all the racks or spot them at night whichever is most convenient to him in handling the material for the following day. During the day he makes trips to the interchange track and brings in a cut of cars in which he may find a bad order car, which will have to be set out and spot the remaining cars in the cut in four or five spots and return to the interchange track and get another car and spot it (p. 5166).

I suppose he could possibly make the two main movements, one in the morning and one in the evening, to and from the interchange track, but he doesn't do so.

The bad order feature is developed while the car is in the process of loading. That is, during the process of loading we take the bottom plug and cap off every car to see that it will not leak. An inspection of the car prior to placing for loading would not discover this defect, so that if the carrier placed the car for loading we would have the same difficulty.

There are probably three hours out of eight that our engine is idle, and the rest of the time it is engaged mainly in movements to and from the interchange track and spotting of box cars in local traffic (p. 5167).

While it is possible that our engine could set up the plant with empties for our Shipping Department and take the loads out in two movements, one in the morning and one at night, in actual practice it is not done.

643 While I have no special knowledge of the cost of the spotting service, I believe it would be less costly to the industry if we could perform the spotting, say in one shift in the morning to and from the interchange track to set up the empties, and the second movement at night to take out the loaded cars, rather than to have the engine runing to and fro in accordance with the requirements of the Shipping Department throughout the day, if it would work out that way. However, as I have explained before, whenever we find cars in bad order we have to set them out and that means another movement.

If the Illinois Central should perform the spotting service, that is, come in and set the cars for loading once a day and pull out the loaded cars once a day they would find it quite a job, because if we find that some of the cars that have been placed for loading are bad order cars those cars have to be switched out and we would have to have some power, whether it be our own or the Illinois Central's, to call on to remove those cars and replace them with others. I wouldn't say this is an every day occurrence, but very nearly every day—at least every other day (p. 5169).

In normal times we would require four or five switches a day. In 1929 we were shipping 40 or 50 cars a day. The number of cars the Illinois Central would be required to bring in and spot would depend on where the cars would be required. For instance, on the asphalt tracks 12 cars can be spotted. On the tracks designated by the letters A, B, C, and D, six cars can be spotted. At that location we have six spouts for each kind of material. We make a practice of pulling all of the loaded cars at the same time except where there is a bad order car, which would have to be switched out and replaced by a good order car (p. 5170).

644 I would say it is possible for some of the Illinois Central's locomotives to switch our plant—that is, the type of locomotive we rented from the Y. & M. V. when our locomotive was being repaired. When we rented a locomotive from the Y. & M. V., we had to put on a spark arrestor. Our own locomotive is an oil burner, and that does away with all danger of fire. If the Illinois Central should perform the service they would have to equip their locomotives with spark arrestors.

If the Illinois Central decided to switch our plant, in normal operations, it could not spot over six cars at our gasoline rack, nor over twelve at our asphalt rack and whatever was needed for the gas, oil, and other racks.

In normal times the spotting at our plant would require constant or stand-by service, that is, an engine there all the time, because we run our engine as high as 14 or 16 hours. We put two crews on our

engine because one crew can't handle the business. They start spotting early in the morning and work late at night. After the cars have been spotted on tracks A, B, C, and D, it takes about 20 to 25 minutes to load those cars. These cars are immediately pulled out and others spotted. That is practically a continuous operation. That is true at all our loading spots, so that we would need an engine there practically all the time the plant is in operation.

In order for the Illinois Central to render as efficient service as we can with our own power it would be necessary for them to keep an engine there all the time working under our direction, so that there would be no delay in our industrial operations. It would have to meet the convenience of the industry (p. 5174).

Witness CUNNINGHAM, Trainmaster, Illinois Central (Vol. 5, p. 5219):

To Destrehan we have a similar service as that of the Standard Oil Company at Baton Rouge. Our through trains set out
645 the cars on what is termed the interchange track. The industry engine performs the service of spotting between the interchange tracks and points of loading and unloading within the plant. Our railroad is the only one that connects with that plant.

I am sure that during the past 10 years we have never performed the spotting service at that plant. As to whether we could perform the service at Destrehan—there is a certain element of difference between the Baton Rouge plant and the Destrehan plant. For instance, at Destrehan we would necessarily do our switching with what we term a local engine. I don't think there is enough business at Destrehan to require an engine, from a practical point of view, to remain there at all times. I am quite sure that the class of engines we use in that territory could not perform the switching within the plant unless the present trackage was relaid with heavier rail and a few of the curves straightened.

The Pan American plant at Destrehan has its own engine, which is available at all times, and if the Illinois Central were to undertake to give that plant the same service as is now performed by the industry it would have to provide the industry with standby service. That would be more than the equivalent to team track service—I would consider that as special service, which would be more expensive to the carrier than the service now performed. We have a yard at Baton Rouge, but we haven't anything at Destrehan except this one plant (p. 5220).

We have rented engines to the Destrehan plant several times out of our Harahan Yards, which is 8 or 9 miles from Destrehan. In order for us to switch the Destrehan plant, it would be necessary for them to make the same adjustments to their track facilities as were made by the Good Hope people, the General American Tank & Storage Company, the St. Rose Company, and everybody else in that territory. When you made those, we could switch the plant as

easily as anybody else. The switching would have to be made by a local train (p. 5222).

646 GULF REFINING COMPANY

(Hearing held May 16 and 17, 1932, at Galveston, Texas.)

R. L. JONES, Yardmaster, Gulf Refining Company, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5421):

DIRECT EXAMINATION

I am yardmaster for the Gulf Refining Company, Port Arthur, Texas. I have been employed by this company for twelve years. I have been in the Transportation Department a little more than eleven years, and prior to that I was clerk in the yard office. My present duties require that I have complete jurisdiction over our switch engine and roundhouse. My transportation experience prior to coming with the Gulf Refining was at stations only, assistant yardmaster and clerk with the Southern Railway and the N. C. & St. Louis.

Prior to granting an allowance to this industry in March 1924, the railroads performed the spotting of the cars, practically all of them. The Southern Pacific at one time maintained a switch engine there, but did the other work with their road engine. The Kansas City Southern performed all of the switching with their road engine.

Prior to granting the allowance the plant engine performed mostly the service of moving the cars to and from the docks in connection with shipments by water.

During the period back in 1921, when the railroads were performing the switching service and the plant engine the intraplant service, no interference was encountered by the motive power of the two companies. Both the spotting and the intraplant switching is now performed by the industry's engine.

647 If the railroads should again take over the spotting service I don't think there would be any difficulty providing they had a certain schedule under which to perform the service. We could keep our line clear and keep the cars out of the way (p. 5423).

At the time the railroads were performing the spotting I would meet the engine foreman at the gate and furnish him with a list showing destination of the cars. The plant was under construction continuously between 1921 and 1931, and our two switch engines were busily engaged in that work.

CROSS EXAMINATION

The railroads continued to perform the spotting service until 1924.

Our plant is enclosed by a fence. There are three different gates for the Southern Pacific and one gate for the K. C. S. to enter. A gateman is on duty at that gate at all times.

There are fifteen or twenty places where box cars are loaded and seven different racks for the loading of tank cars. There are about twenty-five or thirty spotting locations, in all, scattered throughout the plant area (p. 5425).

We have thirteen miles of trackage within the plant. As to whether the two railroads could enter the plant and spot the cars at the thirty odd locations without interfering with industrial operations or interfering with each other—I should say they could; they could be working on one side and I could be working on the other. Of course, this would have to be done under some schedule. For instance, I would want to know when the K. C. S. was coming in as I might be working on the main line at that time. I should think that I would have the authority to arrange the schedule after taking the matter up with our higher officials. This switching
648 arrangement could be worked out under the present conditions which are way below normal without the possibility of any congestion. I have, however, seen the time when we received 100 cars of crude oil and 60 to 70 cars of casinghead gasoline a day (p. 5426).

Our casinghead gasoline rack has a capacity for eighteen cars and there have been times when it would be necessary to refill this rack as many as four times during the day.

At the time the carriers were performing the service at this plant I have known them to be in the plant three or four hours at a time removing the loads from the loading track and setting in empties and doing other work at the Packing Department.

The carriers classified the cars before they were spotted—that is, the K. C. S. classified the cars before coming in the plant and the Southern Pacific did most of the classifying within the plant. I see no reason why the carriers could not perform the service with equal efficiency to the industry as they did prior to 1924 (p. 5428).

As to whether the railroad power entering the plant would create a fire hazard—we have a rule requiring the dockmaster to close the pressure on the gas lines when our engines are serving the docks, and the same rule would apply to the railroads (p. 5429).

The inbound commodities consist of: sulphur, salt, fuller's earth, lime, hay, oats, tin plate, box shooks, paper cartons, gravel, sand, lime, cement, tallow, tallow oil, rosin oil, casinghead gasoline, and occasionally crude oil; also, returned barrels and new barrels. The outbound commodities consist of: gasoline, lusterlite, and lubricating oil in tank cars. We also ship these same commodities in drums; cases of grease, oil and wax, in box cars. All of the inbound commodities are unloaded at different locations reached by sepa-
649 rate tracts. Our outbound commodities emanate from locations where our tank cars, case goods, and drum goods are loaded (p. 5430).

The physical connection of the K. C. S. with the plant tracks is shown on the blue print by the letter A. This carrier has to enter

and leave the plant through the same gate. The physical connections with the tracks of the Southern Pacific are shown by the letter B–1, B–2, B–3, and B–4. The Southern Pacific can also enter the plant through Gate 30. This connection with the plant tracks is indicated on the blueprint by B–5.

Q. Could you readily indicate on the blue print the locations where they load the different commodities, by marking on the map?

A. Yes, sir; I can.

Q. Indicate the sulphur, lime, or whatever it is.

A. All of our returned drums are unloaded right here in this Block No. 1, right down below this track here; this track is next to the barrel-house; all returned barrels are unloaded there. How do you want me to designate that?

Q. Just write "return empties."

A. Barrels or drums, it don't make any difference which. Now, then, the new barrels are put on there, on this track down just below the car shop on No. 1 Track. I will put that "new drums."

Q. Do those cars have to be spotted in particular locations?

A. There is a car left there with a clearance and they shove the car on down by their hands, taking a barrel and shove it on down. We have to give them a shove every time they unload the car, unless they are crowded. We make an opening and the same way over here with the second hand barrels. Here is an acid plant where
650 we spot the sulphur; we have two tracks where we spot the sulphur, one is called the old, and one is the new. This little spur is the new.

(Fol. A–1189.) Q. Is that sulphur shipped in bulk?

A. It is shipped in box cars, unloaded by hand in to a concrete building.

Dir. BARTEL. Is that identified sufficiently?

Mr. HAGERTY. We are marking it now.

A. The sulphur would go in to the acid plant. Then we go on down to the track scales, and just before you get to the track scales, we come to a big warehouse with about nine doors; that is where we unload the cement and a lot of other building material.

Q. Let's mark that one "cement and building material."

A. All right. It has got all kinds of valves, pipe fittings, et cetera.

Q. Those cars require spotting, too, do they?

A. Yes, sir, at the doors; we have different doors for cement and different doors for fittings, et cetera; on down the line down here is the brick yard. All bricks go down here.

Dir. BARTEL. Does that track have a designation?

A. That is the Reclam*m*ation Yard No. 2; we call that track 6½; he has it on the blue print as Reclam*m*ation Yard No. 2. There is some stuff stored there, but the brick plant is here.

Q. Just beyond the point marked "Reclam*m*ation Plant No. 2?"

A. No, sir, just below that spur; it commences there where it says "16." These other three tracks don't mean anything, only for stor-

ing coal. Before we get to the track scales, we turn off (fol. A–1190) at No. 8 track here and spot the fuller's earth.

Q. That goes inside, does it?

A. That goes into the steel tanks; there are three places to spot earth on this track, one here, one in the middle, and one at the track end. You are just talking about inbound commodities now?

651 Q. Yes. Have you explained that for the record? Explain that last remark that you made.

A. About where the No. 2 warehouse.

Q. What do you do there?

A. Spot cars; most of the loads, all stuff from the K. C. S., less than carload stuff, we accumulate it at the K. C. S. house. Now, that brings us down to the salt; that is over here at Gate No. 30, Outlet Plant; two tracks there.

Q. Does that sale come in in bulk?

A. Yes, sir.

Q. Do you unload it in bulk?

A. In wooden tanks, yes, sir; it is put in the hopper in tanks and taken up by elevators.

Q. And the car has to be spotted at the elevators?

A. Yes, sir; four elevators; four at a time.

Q. Now, that brings us down to the tank cars, to tallow and rosin oils, to the shooks; the shooks are right here in a little spur off of the dock tracks. Those are box shooks for the purpose of making cases?

(Fol. A–1191.) A. Yes, sir; and tallow oil and rosin oil.

Q. They go inside?

A. Yes, sir; on that little spur.

Q. They go inside?

A. Yes, sir; inside of the building.

Dir. BARTEL. How about that designated on the blue print?

Mr. BECK. Right close up there is marked "Elm Street."

A. Yes, sir.

By Mr. HAGERTY:

Q. He wants to know how it is marked on this blue print, so we can be sure to locate it. It is now marked in pencil?

A. I will mark what we spot in there—shooks, rosin oil,

652 and tallow oil.

Q. You had some other commodities, like casinghead gasoline?

A. Casinghead gasoline comes up here, I will just mark it "Casinghead Loading Rack," at the lower end of the map.

Q. Were there any other commodities?

A. Crude oil—that spots right here at No. 2 Track, right where it says "K. C. S. No. 2."

Q. Gravel and sand—we did not get that—that goes back on this track, Reclamation Yard No. 2, right here. The gravel and sand is dumped in there, is it?

A. It is handled with the Brown hoist; he unloads this with a hoist.

Q. Is that all?

(Fol. A-1192.) A. Yes, sir.

Q. Now, will you take the red pencil and mark the loading points of the outbound commodities?

A. Both tank cars and box cars?

Q. Yes, sir.

A. Both tank cars and box cars. All right. We will start here on Dock No. 2, box cars, cases et cetera.

Q. That includes all of your case goods?

A. No, sir; not all of them. We have another little plant at the back of the plant that we load cases from.

Q. Let's mark that Box Car No. 1 and the other No. 2.

By Mr. BECK:

Q. What particular grade is loaded in those box cars?

A. Everything that you can think of except the Gulf Pride; the Gulf Pride is located back at the other place.

Q. All products but Gulf Pride, which is a special grade of lubricating oil, is loaded at this Dock No. 2?

653 A. Yes, sir; unless it is carried over there in tank cars, with the exception of Gulf Pride.

By Mr. HAGERTY:

Q. You were going to mark the other box car loading point?

A. The Gulf Pride loading plant, Gulf Pride cases, I will mark that "G. P. Case Oil."

Q. "G. P. Case Oil?

A. "G. P.," Gulf Pride case oil. We have wax, Gulf Wax, which goes out right here.

Q. Wax—what is that going out?

A. That is the wax packing house where it is all put up.

Q. Does that go out in cases?

A. In boxes or paper cartons.

Q. That is marked on the blue print?

A. Yes, sir. There is other loading there in tank cars; right over here is where we load the gasoline, loading rack No. 3; it is not necessary to mark that hardly, it already says what it is.

Dir. BARTEL. That is clear on the exhibit.

A. Over here is where we load the lusterlite, marked "kerosene loading."

By Mr. HAGERTY:

Q. That kerosene loading point mark is on the blue print?

A. Yes, sir; it is marked "Kerosene Store." Here is the gasoline loading rack. Acid plant—right here we load quite a good deal of oil, a bright stock in tank cars.

Q. Is that gasoline?

A. No, sir; that is lubricating oil.

Q. You only load the gasoline in one place?

A. That is all.

Q. How many cars will that gasoline rack hold?

654 A. It holds eighteen; it was built for twenty, but they are making the cars bigger and we have room for only eighteen.

(Fol. A–1194.) Q. These cars are spotted there for gasoline which are delivered to you by the Kansas City Southern and T. & N. O.?

A. It does not make any difference for the road that is doing the switching; they have access to it from both ends.

Q. I assume that you will have some gasoline empty tank cars delivered at your plant by the Kansas City Southern?

A. Yes, sir.

Q. Also by the T. & N. O.?

A. Yes, sir.

Q. If they were both switching the plant, how could they both get to the plant at one time?

A. It would be easy, like one man coming along this way.

Mr. Beck. Show it on the blue print, so the Director can see how easy that would be to perform.

A. Here is the Kansas City Southern coming along here, he could get his loads and go back and throw them on his own track, or he could throw them on the main line.

By Mr. Hagerty:

Q. Let the record show that the witness is talking from the right—we call this the west side.

A. Yes, sir; the west side.

Q. From the forks diverging from Gate No. 28 on the blue print?

By Mr. Beck:

Q. Pardon me—you are speaking about the gasoline loading now, are you not?

A. Yes, sir. No, it is not 28, it is 23.

Mr. Beck. That is what I thought. When you were speak-

655 ing (fol. A–1195) about the forks west of 23, that is kerosene, but on the main line that is gasoline, is that not correct?

A. 22 and 23, there are two entrances there.

Q. Supposing you have these empty tank cars coming in at the Kansas City Southern and they are to be loaded with gasoline, and you also have some empty tank cars to be loaded with gasoline by the T. & N. O. Do you tell each carrier how many to bring in and where to spot them?

A. Oh, no; the main line would hold all the surplus which would not go in—it would not make any difference where they spotted them.

Q. I am assuming that the carriers would spot them within your plant?

A. He could shove in his cars and take out as many loads.

Q. Regardless of whether the cars came in from Kansas City Southern, you would ship those out over the T. & N. O.?

A. No, sir.

Q. Won't you have an equalization of mileage?

A. It don't make any difference if 3438 came in over the Kansas City Southern and 3232 over the T. & N. O.

By Mr. HAGERTY:

Q. You mean if the T. & N. O. brought ten cars into your plant, he would not necessarily spot those ten cars, but he could spot ten other cars?

A. Yes, sir; we have three sizes of cars; if he wanted tens or twelves, it would make a difference.

(Fol. A-1196.) Q. If you wanted tens or twelves, it would be up to the engine in the yard to pick out that particular number of cars?

A. Yes, sir.

Q. Have we marked the blue print with all the places for loading and unloading?

656 A. Yes, sir; I believe so, but one place where I left out the fuller's earth at the paraffin plant. Just about where it says "Paraffin Plant," between the plant and the word paraffin is "earth," one spot That gets everything.

657 The K. C. S.'s tracks run through the refinery to West Port Arthur. These tracks are designated on the blueprint as K. C. S. No. 1 and K. C. S. No. 2 and are owned by the railroad.

The tracks of the Texas & New Orleans (Southern Pacific Lines) are shown on the blueprint as starting in the southwest corner and running in a northernly direction to the center of the map, then branching off through the plant toward Port Arthur. This latter portion of the tracks is jointly owned by the K. C. S. and the T. & N. O., with side tracks which are used in interchanging traffic between the two carriers. The Refining Company interchanges traffic with the K. C. S. at the first switch beyond K. C. S. No. 2 as shown on the blueprint. The tracks of the K. C. S. are used jointly by the K. C. S. engine and the industrial engine in reaching the industry's car shops and making deliveries of casinghead gasoline to the K. C. S. The industrial power also uses the T. & N. O. tracks occasionally, which run through the center of the plant. There is no interference in the common use of those tracks by the industrial engine and the railroad engine. That is true of both the K. C. S. and the T. & N. O. tracks. The K. C. S. only come in once a day (p. 5439).

A blueprint of the industrial lay out was received in evidence and marked "Exhibit A-46, Witness Jones."

The industrial engine has been operating over the tracks of the K. C. S. and the T. & N. O. ever since the industry has had its own power.

C. L. FRANKLIN, Traffic Clerk, Gulf Refining Company, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5441):

DIRECT EXAMINATION

I am traffic clerk for the Gulf Refining Company at Port Arthur, Texas. I have been in the employ of this company
658 since October 27, 1919.

The allowance paid to the Gulf Refining Company was arrived at by a cost study. In conducting the cost study the plant engine was used. The railroad engines were barred from coming in. The matter of switching was handled just the same as if the railroad was switching the cars. Cars to be spotted were charged to the railroad. Intraplant moves were charged to the industry. Idle time was also charged to the industry. Prior to granting the allowance the railroads were performing all of the interchange work. This work by the railroads was discontinued while the test was being made, so that there would be no interference whatsoever and at the same time giving the carriers the right-of-way. The test was made under the joint supervision of both the railroads and the Refining Company. In 1923 the cost of performing that service was a fraction over 91 cents per car. Following the cost study an allowance of 90 cents per car was granted the Gulf Refining Company.

A statement showing the cost of the service dating back from March 1924, to the present time, compared with the present allowance, was received in evidence and marked "Exhibit A–47, Witness Franklin."

The costs arrived at in Exhibit A–47 are based on an engine hour basis. A monthly switching statement is prepared; it shows the cost for the railroad handling and the cost of handling cars intraplant. In arriving at the direct costs we used the wages to the crew, switchmen, engine foreman, laborers, engineer, fireman, switchman, foreman, clerks, hostlers, and cost of fuel, water, oil, other supplies and expenses, repairs, and repair materials. The indirect costs, being fixed overhead or investment, include depreciation, insurance, and taxes. We figured five percent for depreciation on the investment (p. 5445).

CROSS EXAMINATION

The average cost per car is what it would cost the railroad if it were performing some switching.

659 J. C. Beck, Assistant General Traffic Manager, Gulf Refining Company, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5452):

DIRECT EXAMINATION

I am assistant general traffic manager of the Gulf Refining Company, Pittsburgh, Pa. I have been employed in the Traffic Department of the Gulf Refining Company since July 1912, and have acted in my present capacity since 1924. I would like to make a

general statement for the record as to the allowance granted for spotting service in the Port Arthur Refinery.

Along in May of 1922, our executives had conferences with the Kansas City Southern Railway people with regard to an allowance. This was incidental to our engine having performed certain services at the refinery which we thought was a service properly rendered by the railroad. There was nothing definite accomplished until April of 1923, at which time we were offered by the railroads the allowance we now have with the understanding that we would perform the service ordinarily required by the railroads and heretofore performed by them in spotting cars for loading, or, rather, in pulling loads and spotting loads at the refinery. The question of the allowance insofar as pertains to intrastate traffic was made the subject of a hearing before the (fol. A–1219) Railroad Commission of Texas, inasmuch as intrastate traffic as well as interstate traffic was involved. After due hearing, the Railroad Commission of Texas authorized four allowances as the railroad published originally to apply for account of interstate traffic.

As to whether the allowance offered by the Kansas City Southern in May 1923 was based on the voluntary action of the K. C. S. or upon application by the industry—we filed no definite
660 application, but our executives had negotiations with the K. C. S. about a year prior to that time, looking forward toward the establishment of an appropriate allowance. I know of that because I was called upon to give our people information as to how to arrive at such an allowance, and our reply was that the allowance would have to be based on the actual cost of performing the service to the industry. The negotiations that took place in 1922 were orally made. The offer made by the K. C. S. was written.

Pending negotiations with the Gulf Refining Company the carriers made an allowance to the Magnolia Petroleum Company, at Chaison, Texas. The allowance made to the Magnolia Company was originally made by the T. & N. O. and later by the Texarkana & Fort Smith. The original offer of an allowance by the T. & F. S. is what brought about a check of the refineries by the various railroads and the industry. The carriers specifically stated that any allowance made to us would be based on an appropriate cost study of the service rendered. They did say, however, that inasmuch as an allowance had been granted to the Magnolia people that they would feel disposed to make us some allowance since they had apparently favored that method of taking care of the situation rather than continue to do the work themselves. I might say, in this connection, that the allowance as shown by Exhibit A–47 is not equivalent of the actual cost to the industry, and if it were, we are adverse to having the railroads, at any time they desire, come in and perform the service.

The following statement, "We feel that we will be compelled to meet the action of the Southern Pacific Company at Chaison, and

will want to treat your company equally as well as do the Magnolia Petroleum Company, although the service might not be exactly the same in both instances, and the service which your company
661 might perform for us might have to be computed on what we could agree on as to the cost of same by some fair method, you realizing that to do anything more than to pay the cost might be considered illegal," is an exact quotation from the K. C. S. letter of April 30, 1923. There is nothing in that letter to indicate that the allowance was solicited on any other basis than to meet the competition at the Magnolia Petroleum Company's plant although eleven months prior to the date of that letter we were discussing the situation with the executives of the K. C. S., because at that time, our engines were being called on to do certain work in spotting, which ordinarily theretofore had been done by the railroad.

I don't know the result of the negotiations in 1922, but as far as the Traffic Department goes the matter was in status quo until the announcement came as to the Magnolia Petroleum Company's allowance. The negotiations were made orally in 1922 and no allowance was granted at that time. Nothing further was done until the K. C. S.'s letter of 1923 was received, suggesting that we make application for an allowance.

The offer for an allowance, as the letter indicates, was predicated upon our being able to make a proper showing as to why we should have an appropriate allowance. This brought about the cost study that was made by the railroads and the refinery.

A letter dated April 30, 1923, addressed to C. V. Ellis, Traffic Manager, Gulf Refining Company, Pittsburgh, Pa., signed by J. F. Holden of the Kansas City Southern, was received in evidence and marked "Exhibit A–48, Witness Beck" (p. 5456).

At the time this letter was written Mr. Ellis was Vice President of the Refining Company, in charge of traffic. He has since been retired. The plant of the Gulf Refining Company has been considerably enlarged since the writing of that letter, resulting in increased business to the railroads.

662 The Maximum curvature of our track is 22 degrees, and it is my understanding that the K. C. S. switch engines did negotiate a curve of 22 degrees at the time they were switching our plant. Our people seemed to feel that the engine we have down there is similar to the one that the K. C. S. formerly used in performing the service. If the carrier should elect to perform the service at our plant at this time there would be no objection on our part (p. 5458).

CROSS EXAMINATION

The refinery began operations in 1902. I have been with the industry for twenty years, and the length of time the carriers were performing the spotting service goes somewhat back of my service with the company. The carriers performed the spotting service until

March 1924. Along in 1922, we were being called upon to perform some of the service for the carriers, with our own engines, and our own people entered into negotiations with the railroads seeking an allowance, which led to the voluntary offer by the railroads to have us do all of their work for an appropriate allowance.

As to why the railroads called upon the industry in 1922 to perform some of the spotting service—apparently the railroads were not able or did not have the power available, but the service we were performing for the railroad became more or less regular, which caused the industry to negotiate with the railroads for an appropriate allowance.

The matter of an allowance was first taken up with the K. C. S. and that road was the first to grant an allowance. We did not enter into negotiations for an allowance with the Southern Pacific until after the K. C. S. had offered us an allowance.

An allowance of 90 cents on interstate traffic was first made by the T. & F. S. on March 31, 1924, and on April 3, 1924, an allowance of the same amount was made by the T. & N. O.

663 The refinery people made a study of its plant operations prior to the joint study made by the railroads and the refinery. The result of that study, as shown in a letter from Mr. Ellis to Mr. Holden, determined the cost to the industry to be 61.2369 cents per car.

A letter addressed to Mr. Holden from Mr. Ellis, dated July 26, 1923, was received in evidence and marked "Exhibit A–49, Witness Beck."

With reference to the third paragraph of the letter (Exhibit A–49) I gather that it must have covered the cost of handling the traffic of the K. C. S. only. The cost for performing service for one railroad does not necessarily reflect the cost of performing it for another railroad. No study was made of costs of performing service for the T. & N. O. prior to the joint study made between the carriers and the refinery. We finally adopted the figures of the joint study which was made from November 5 to November 14, 1923, showing the average cost to be 91.1 cents.

The cost factors used in the joint study included the cost of the locomotives, depreciation 4½ percent per annum, based on original cost; cost on investment, based on original cost; taxes, based on last year's assesments; repairs, classified; repairs, running; fuel, water, lubricants, other engine and yard expenses, station repairs and expenses; wages of engine switchmen, yardmaster, yard clerks, engineer, and 10 percent for supervision. This study does not include anything for the use of the tracks by the railroad companies (p. 5465).

We purchased our switch engine in 1919 for the purpose of performing intraplant switching, the idea being to make it possible for the railroads to perform the spotting at their convenience (p. 5465).

The only refinery I know of in the Beaumont-Port Arthur District that is receiving an allowance different than that paid our industry

is the Port Neches Plant of the Texas Company, which is $1.00.

664 At the time the cost study was made empty cars moving into the plant were taken into consideration with the loaded cars moving out. The allowance, however, is predicated on the loaded cars only, although the movement of empties inbound is likewise an obligation of the carriers (p. 5468).

As to why we are not receiving actual costs instead of the allowance paid—there are several reasons. In the first place, when we first started out on the allowance, take the year 1925, the 90 cents was sufficient. From 1926 on down to the present date, I do not know of any major oil company that was not working about ten to twelve hours a day in connection with the general oil rate investigation, and our company was involved in the situation, not only in the East, but also in the West, so that even though we know that the present allowance is insufficient, I will state positively it is not a closed record with us, and I will qualify it by saying that we are not satisfied with the existing allowance, and that is one of the reasons for our keeping this perpetual cost study with the idea in mind that as soon as possible we will go to the railroads to have another cost study, looking towards the allowance being made commensurate with our actual cost.

It is up to the railroads to be satisfied as to what our actual cost is. Whatever our cost study produces is what we would ask the railroads to allow us. We would not stop the railroads from performing the spotting service if they wanted to. We are in position, according to my way of thinking, of going to the railroads and saying that the present allowance is insufficient, giving them our cost study and asking them to check it back to completely satisfy themselves, and then tell them that we expect an allowance commensurate with the service performed.

665 A letter from Mr. J. F. Holden to Mr. C. B. Ellis, dated February 13, 1924, was received in evidence and marked "Exhibit A–50, Witness Beck" (p. 5470).

It is true that because of the nature of the industry, the carriers, for their own protection and also for the protection of the industry, had to observe certain rules and regulations pertaining to fire hazards. For instance, there are certain times when bunkers are being loaded from numerous tank cars when we cannot spot box cars along our docks unless we make special arrangements with the dockmaster to have everything in shape for our engines to perform the work.

As to whether an allowance of $1.50 to a competitor as against an allowance of 90 cents to our company would be considered as a discrimination—I have known of instances where the Interstate Commerce Commission has held that that would be discrimination—I have in mind the Jackson Iron & Steel Company case. In a general locality where such service is performed there seems to be little reason why there should be a great difference in the cost of performing the service and the allowance ensuing therefrom.

Assuming that our costs were slightly in excess or slightly lower than the cost of a refinery immediately adjacent, in figuring an allowance, the railroad should make the same allowance in the same general industrial district. I do not believe that two people will ever find the same costs at the same time; one may be greater for a six months' period and others might be less for the same six months' period. That is, they go back and forth. We have nothing positive or regular upon which to figure actual costs. In peak times, 1928 and 1929, the cost of performing the service to the industry was considerably greater than the allowance. For instance, in 1928, our cost was approximately $1.15 and in 1929 approximately
$1.07. On the other hand, with abnormal business conditions
666 our costs will jump higher. For the first three months of
1932 our average cost of performing this service at Port Arthur was $1.21. The cost per car varies with the number of cars handled. For instance, if two plants were side by side and each of the same identical size and capacity, with the same extent of industrial trackage, and the output of one was twice as much as the other, the cost of spotting the second plant would be about one-half of that of the first plant. As to whether the allowance would be one-half as great as its competitor—you would be entering into the element of discrimination, which, to my knowledge from a number of cases which I have read, the Commission has condemned. Discrimination is one element in the question of allowances. We are not making that an issue here (p. 5475).

I would expect the same kind of service from the railroads that we perform for them. I would call it just an ordinary service. When the railroads performed the service, they encountered, to my knowledge, no difficulty in performing it and I do not anticipate any difficulty if they again resume it. We wait on the railroad's convenience.

The present advantage would be for the railroads to spot the plant, because the allowance is not commensurate with our cost, but dealing with the situation in the aggregate, if the railroads want to continue to make the allowance or if they want to resume the spotting it is up to them. The service by the railroads would not affect our industrial operations, but as far as the existing allowance is concerned it is not a closed book with us. We naturally intend to take the matter up further with the railroads for an increased allowance. We will ask the railroads to do the same thing they did in 1923, that is, send a representative in and make a check of the industrial operations and we will make one and compare notes (p. 5477).

667 T. H. MEEKS, Assistant to General Manager, T. & N. O., was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5479):

DIRECT EXAMINATION

I am assistant to the general manager of the Texas & New Orleans Railroad, Texas. Before becoming assistant general manager I was

on the Beaumont division or the divisions that include this Chaison and Port Arthur switching district.

I am familiar with the return to the questionnaire of the Commission which the T. & N. O. has filed in this case, and the statements with respect to the Gulf Company and the switching, etc., are correct.

CROSS EXAMINATION

I am familiar with the service rendered by the T. & N. O. to the Gulf Refining Company. The T. & N. O. performed the spotting at the Gulf Plant when the plant was first started, back about 1906 and they continued this service until the plant grew to considerable size. Back in February 1918, the industry was performing some of the spotting. I am not sure just how much but we were doing a considerable amount of it with our road crews. The industry was also operating a switch engine within the plant. That condition continued until November 15, 1922, when we maintained a switch engine in the plant constantly until the allowance was granted.

I want to correct the statement found on page 15 of the return to our questionnaire, "Industries had to perform switching service with their own power and at their own expense prior to the allowance. Information is not available as to when this service began, but it was presumably in effect from the beginning of plant operations," to the extent that we had performed a considerable amount of
668 switching in the plant with two road crews, but I am not prepared to state if we did all of it prior to the time we put the switch engine in the plant in November 1922. Our road crews went into the plant and did the spotting; we did not have a switch engine on at that time. This engine was put in the plant primarily to do the work for the Gulf Refining Plant. It never did get to the Texas Company's Plant. Our idea was to have this engine do work at the Gulf Plant, the Texas Plant, and other work, but it very seldom got away from the Gulf Plant. Our road crew made a delivery of empties in the morning and pulled the outbound loaded cars in the afternoon. When they went in there in the morning they spotted the loads inbound and empties for loading, but whether they cut any empties out at some convenient place for the industry to spot later I do not know. I am inclined to think, although I am not positive, that the plant performed some of the spotting and we performed some of it. We performed adequate service to meet the needs of the industry except, of course, where they had a large number of cars to load at a rack, and the capacity of the rack was not sufficient to accommodate all of the cars to be loaded in one day. If we merely supplied morning and evening service at this plant and the service at the filling rack necessitated refilling that rack during the day, then the service we were rendering would not be adequate for the needs of the plant (p. 5483).

Our road engine spent the day working the plant, except for time enough to run down to Sabine and back. This road engine classified the cars on its main line.

Certain commodities would have to be spotted at a particular place. Our conductor would have a list made out, and the yardmaster of the Gulf Company would meet him at the gate with another list. Our conductor would take his instructions from the yardmaster. We are covered more or less by the plant
669 in any industry. We had one local freight train each day in each direction (p. 5485). That same crew performed the service morning and evening, spotting inbound in the morning and outbound in the evening. We were glad to be relieved of the service.

I was in charge of the cost study made at this plant and found that the industry could do it cheaper than we could. We found their cost to be 93 cents a car during the test period. The return to our questionnaire shows that we paid the Gulf Company $10,720.80 in 1927; $6,315.30 in 1928; $18,394.20 in 1929, and $6,154.20 in 1930. Our records show that it cost the T. &. N. O. per engine hour approximately $10.00 an hour. That figure had reference to the operation of a switch engine and did not include some other allowances which ordinarily would have to be included.

The engine hour cost of the road engine was so expensive that we put a switch engine on. It was working sixteen hours a day and sometimes violated the sixteen-hour law, and we had to send an engine after them and pay for overtime. We had to put the switch engine on to reduce the cost of the road crew.

The industry has always maintained their tracks in good condition and I know of no reason why our engines could not go in the plant. I do not think there would by any interference or delays between carrier power and plant power, and I don't think there would be any interference or delays between our power and that of the K. C. S. if we didn't try to see which would get his loads first (p. 5489).

REDIRECT EXAMINATION

The matter of delays is predicated on the industry, the K. C. S. and the T. & N. O. working together and arranging their time so that they would not undertake to spot the same points with their crews at the same time. If we hire the refinery to perform the spotting they cannot complaint to us about delays. If we furnished a switch engine at Port Arthur, under our rules with the trainmen, we could not run that switch engine from Port Arthur to Beaumont and back.

670 The local freight crew operates out of Beaumont and they do local work, intermediate between Beaumont and Port Arthur, but if we had a switch engine at Port Arthur, under our rules with the trainmen, we could not run that switch engine from Port Arthur to Beaumont and back, we would have to give that to

the road men and to tie the switch engine up at Port Arthur, we would have to construct facilities and every month we would have to ship that engine into Beaumont and give it the Government test and have an engine to go down there and take its plant, so we would be confronted with a lot of difficulties, or rather, arrangements for putting that kind of an operation into effect down there, and it would all be expensive to us because we would have to employ two engine watchmen during the time that engine was tied up, and the K. C. S. would not have to do that, as I recall it, because they have some sort of an engine facility over there that they could probably tie up the engine without adding any engine watchmen, but it is entirely different, an outlying point to us, and we would have to provide those facilities and, as a consequence, the expense to us would be a good deal more than it would be to have the plant do the work
671 for us (5492). We would have to tie the engine up at Port Arthur and would have to construct facilities at that point.

As to industries that perform service of spotting cars without an allowance—as far as the Sinclair Oil Refinery at Houston is concerned, we do the spotting on the south side of the T. & N. O. line where they have a rack. As far as the other side is concerned, that is served by the Port Terminal Railroad Association, of which the T. & N. O. is a member. The return to the questionnaire with reference to the Sinclair Company is correct, in that their switching within their plant does not extend across to our main line on the south side, and we do spot any oil that we haul into that plant for unloading, but anything else that goes in on the other side is handled through the Port Terminal. The Port Terminal is not an incorporated railroad, but is merely an organization of the railroads for use in performing the terminal service for the roads at that point.

With reference to the spotting at sand and gravel pits—their loading is progressive, and I do not think there is any way of segregating the work that might be classified as belonging to the industry—we take the position that that is their obligation. We interchange the cars at the point of connection with the railroad track and the track of the gravel company. The reason we do not run the cars down to the quary is because the gravel people want to get their engine behind the cars and shove them down. I don't think they have set-out tracks to put the cars on, and rather than to assume the expense of building a track for that purpose, they would rather take the cars from point of connection with the railroad. They would probably have to raise the standard of their track construction,
672 because they use a much smaller locomotive than we do. Another reason is that they are in the country where we serve the territory exclusively by local freight trains, and the power is much heavier than they use in the gravel pits (p. 5496).

We have engines that can negotiate a 22 degree curve and greater. In fact, we have an engine that can negotiate a 35 degree curve in the Magnolia Petroleum Plant. We are still using those locomotives; they are good sized switch engines.

I regard the service at the Gulf Company as equivalent of any ordinary team track or ordinary spur track delivery. We perform a great deal of similar service for industries with our own power. What might ordinarily be considered team track delivery is often carried on at considerable delay and expense to the railroad, as compared with direct delivery on specified industrial tracks. Where we have a long team-track we can do a lot of spotting. It is a thing that has to be watched mighty close. Ordinarily we try to make team track deliveries at night. We try to avoid switching during the day when people are loading or unloading cars, but we frequently have to cut cars in. This requires time as frequently some fellow does not want to get out of the way. It is an unsatisfactory thing, but we frequently have to do it. With a carload of automobiles we put them in the S. A. P. yards, and if the train is late and everyone else has started unloading we have to interrupt them. We have what we call a reciprocal switching arrangement with respect to serving private side track deliveries. We bring our road haul train into Houston and put it into some classification yard and then break it up and make delivery on a private siding nearly eight miles or four miles away without extra charge. This involves taking our switching locomotive from our classification yard to the private siding, placing the cars on the siding and removing any loaded cars therefrom. That is a normal situation in any large industrial switching district.

I do not mean to infer that we would perform the spotting service where the industry to be served would not let us upon their
673 tracks for some reason or if the tracks were not in condition to permit us to enter, or some special service is required, such as, constant feeding of cars over a twelve or twenty-four hour period (p. 5502).

T. H. MEEKS was recalled, and testified as follows (Vol. 6, p. 5551):

DIRECT EXAMINATION

When we had more cars, consigned to the Gulf Company, than we could spot in an accessible position for loading or unloading, we left them on the storage track or transfer track in the yard. This was especially true during the period of heavy construction. Sometimes we later took those cars in and placed them for loading or unloading, and sometimes the industry took them in with their own engine.

The storage track I refer to is really an interchange track, which is owned by the railroad and located on the railroad's right-of-way, on which we make delivery of cars to the refinery and receive cars from the refinery. We receive the cars there at the present time.

The allowance to the Gulf Company covers a round trip movement, that is, it applies to an empty car taken in to be loaded or a loaded car taken in which may come out empty. The 90 cents covers the round trip movement. The tariff provision does not mean that we

give them a separate allowance on the empties, but it carries with it the cost of the complete circle of that service (p. 5552).

As to whether we make an allowance on thirty cars, where only eighteen of the thirty could be spotted and twelve placed on the storage track—we make the allowance on all those loaded cars. The question of what the operations are within the plant has no bearing on it at all.

Whether we included in our test the factor of time for
674 the movement of the twelve cars from the storage track to the loading track—wherever we let a car rest the first time that constituted the final disposition of the car, so far as the railroad was concerned, and only computed the time up to that point. Any subsequent move of the loads or empties was charged against the industry's time. The movement of the empties from the storage yard was not a time factor included in our costs (p. 5553).

CROSS EXAMINATION

As to why we took in eighteen cars when the loading track would hold only twelve—we had to put them wherever they said to put them, we had to make the final disposition of that load and if they said put them on one track we put them there. It is a practical proposition as to the best place to put the cars. This method is governed by custom and usage as to the most practical and economical way to handle the cars. At the present time we put them on the interchange track and the industry can leave them there as long as they want to (p. 5554).

It is the practice for some industries to order the cars spotted upon the industrial tracks as they need them. That is particularly true with the gravel companies and the cotton companies (p. 5555).

675 MAGNOLIA PETROLEUM COMPANY

(Hearing held May 17, 1932, at Galveston, Texas.)

S. G. REED, Freight Traffic Manager, Texas & New Orleans Railroad, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5503):

DIRECT EXAMINATION

I am freight traffic manager of the Texas & New Orleans Railroad Company. I have had forty-odd years of railroad experience. I am familiar with the reference to the dates and designations of tariffs covered in our answer to the Commission's questionnaire with reference to switching allowances, and they are correct, to the best of my knowledge.

The Magnolia Petroleum Company at Chaison, Texas, was the first to receive the switching allowance in the State of Texas, to the best of my knowledge.

The circumstances under which the allowance was made are as follows. About ten years ago, I think it was in 1921, the Magnolia Petroleum Company negotiated with the T. & N. O. to perform the switching service that is incumbent upon the line haul carrier in the delivery of line haul traffic. At that time they were performing the service themselves. We recognized the fact that we were delegated to perform that service, and negotiations were instituted with the view of getting us to perform it. I have not the file of correspondence and I can not give you the exact date, but we thought that the Magnolia Petroleum Company could perform that more economically and cheaper than we could ourselves, and we endeavored to effect an arrangement with them whereby that would be done. It was
676 first figured on the basis of the number of hours that would be required by the railroad in performing the service, and giving the service, that we would normally and properly be required to give. That was computed on a basis of the number of engine hours that would be required, and our operating officials thought that if we could arrange with the Magnolia Petroleum Company to do that service themselves, it would be more economical for us than to do it ourselves, and we originally filed an application with the Interstate Commerce Commission for authority to make an allowance to them based upon a cost of $10.00, as I recall it, per switch engine hour, and we had some correspondence with the Interstate Commerce Commission who advised that while that was different from the basis upon which such allowances had been made, it might be made. We conferred with our attorneys, and we originally proposed to file a tariff upon that basis. However, upon further consideration of the matter, we felt that if it were converted into cents per car, it would be more satisfactory and more consistent with the plans of the Commission in such cases, and we determined upon a charge of 72 cents per car, as I recall it, which was based upon the average number of cars handled by that company at that time. We used that basis for the tariff—I think it is in the record in answer to our questionnaire. That was the origin of the oil company's allowances in the Houston-Beaumont District.

As to why the allowance was changed from 72 cents per car to 90 cents per car—the allowance was not entirely satisfactory to the Magnolia Petroleum Company, who contended at that time that their cost was in excess of that amount, but they accepted the figure and they kept an accounting of their expenses, and about that time the question of allowances to the other oil companies in that territory came up and a study was made as to the cost of performing the service at Port Arthur for the Gulf Refining Company by the
677 Operating Department of the T. & N. O. and the Kansas City Southern, and their study developed that the cost of handling this traffic at Port Arthur by either or both the Kansas City Southern or the Southern Pacific would be in excess of 90 cents per car. I don't recall the exact figures, but my recollection is it ran from $1.00 to $1.15 per car, and our operating people for both lines figured

that it would cost us more to perform that service than the figures operating expense of the Gulf Refining Company. The figure of 90 cents was agreed as fairly representative and not in excess of the cost to the company and less than it would cost either of those roads to perform the service themselves, and about that time it was shown to the satisfaction of our operating people that the cost of performing the service to us at Chaison would be greater than it would have been at Port Arthur, by reason of the fact that we had about six miles from Beaumont for our engines to operate before we got to Chaison, and instead of allowing them what they claimed was their cost, one dollar and something per car, they agreed to accept, with some reluctance, the allowance that we had agreed upon as proper and fair, and in accordance with the formula of the Commission at Port Arthur for the Gulf Refining Company (p. 5505).

As to whether 90 cents would be reasonable compensation to all oil industries, who are served under like circumstances, in this particular territory, and whether that accounts for the fact that at other points the allowance of 90 cents is presumptively based on cost—the Gulf Refining Company and the Texas Company are two of the largest oil companies, and their volume of business is as great or greater than others in that territory. The cost per car, therefore, for the service they perform as well as that which we perform, would depend in a large measure upon the volume of traffic and upon the con-
678 venience of their track lay out for handling the service. It was thought that the Gulf Refining Company represented the lowest cost per car for service performed by the industry, and service performed by the railroad, and if 90 cents was a reasonable allowance or a proper allowance at Port Arthur or West Port Arthur, then it would not be in excess for the Texas Company at the same place or the Magnolia Company at Chaison.

Whether or not the established costs, that is, 72 cents to the Magnolia Company and $1.50 per car to the Gulf Refining Company, are reasonable—the 72 cents per car to the Magnolia Company simply represented the division of so many hours of service divided by the average number of cars handled. The Magnolia Company contended at that time that their cost was in excess of 72 cents, but they accepted the allowance simply as a compromise with the understanding that it would be readjusted to the actual cost, provided, of course, it did not exceed the cost to the T. & N. O. Our cost would be in excess of 90 cents per car (p. 5507). I don't know how much, but they were very glad to be relieved of the requirement to perform that service.

The railroads serving these plants do not undertake to make the same allowance per car to each plant. On the other hand, we compensate the industries with the actual cost of performing the service, providing such service does not exceed that of the railroad. Competition does not enter into the establishment of these allowances.

In each and every instance when we have had the matter up we have insisted that the operating people should determine, first, what it

costs us to perform the service; second, what it costs the industry to perform the service that we are required to perform, and third, whether it is desirable for us to let the industry perform the service rather than perform it ourselves; in other words, whether or not we would save money by letting the industry perform the service.

679 I do not mean to infer that the question of the amount of an allowance to a particular industry reduces itself to a bargain in the particular case, but we do avoid paying any more than we have to, and if they don't want to accept 90 cents, for instance, we will step in and perform the service ourselves. We do not consider that as a bargain, but on the other hand, it would be good business.

For instance, if the industry wanted $1.15 we would prevail upon them to accept 90 cents if we could do so (p. 5509).

CROSS EXAMINATION

Generally speaking, the tariffs providing for allowances to the industries for interstate traffic, are filed subject to the usual 30 day notice; and the tariff covering intrastate traffic is filed with the Railroad Commission of Texas and a certain length of time intervenes before a change is made in the intrastate rates.

We have about twenty-five team tracks in the metropolitan district of Houston, Texas, which are not owned or controlled by any particular industry, but are held by us for placement of any cars that move over our line. Some of these team tracks are as much as five or six miles apart.

These team tracks are widely separated and probably the average distance from the Englewood Yards, where we classify our traffic, to the various team tracks would be about two miles and we would place the cars arriving via our line for that distance.

In the event that a shipper wants his car placed on a particular team track, it is our usual practice to spot the car for him, but we do not obligate ourselves under our tariff to place a car that takes team track delivery on any particular team track. We will place it

680 at some point within our yards on a team track that is accessible to facilities for loading or unloading the car.

Q. But should he request delivery, we will say, on the Camp Logan team track, in that vicinity, it would be your practice, ordinarily, to take care of your customers, wouldn't it?

A. Yes, sir.

By Mr. HAGERTY:

Q. But, in the case where the industry asks for a special spot, Camp Logan, would you pay the industry for hauling the car from Camp Logan to the industry?

A. There would be no industry involved there (p. 5514).

At the industrial plant traffic is delivered to the shipper on the private tracks of the industry, and the carrier pays the industry for moving the cars from the delivery track to points of unloading within the plant, but in the case of deliveries on team track the shipper has

a further service to perform that is not necessary at the industrial plant. No allowance is made to the shipper for hauling to the team track. That is a different service.

It is the policy of the Southern Pacific in this territory to require the shippers to maintain their own private tracks and build their own private tracks. To require the shipper to build his own tracks is contrary to our policy (p. 5516).

By Mr. HAGERTY:

Q. Do you have to get a right from the shipper who has built a track to operate over that track?

A. No, sir; we won't operate over that track unless he executes a contract.

Q. Then you require that the shipper let you use that track free?

A. No, sir; if he wants us to serve that track, we require that he execute a contract that protects us from liability in placing cars on that track, for accidents that may occur, and various other things that are recognized.

681 Q. Where you generally acquire trackage rights over somebody else's tracks, don't you pay for those rights?

A. We are not acquiring trackage rights from the industry; we are simply complying with wishes or accommodating him by placing cars that we would ordinarily place on our team tracks on a private track of his.

Q. You assume that you are doing something that you are not required to do?

682 A. We are not as a matter of law, I understand, required to do any on private property, to go in and place cars on private property unless we are properly protected in all of our legal rights.

Q. Do we understand that to mean, as a matter of accommodation, you go in and do that, and not because the shipper is entitled to it?

A. That is a question of law. I think the lawyers can answer that.

Q. I don't intend to have you give any legal opinion, but the practice that you do not pay a shipper any compensation, rent or otherwise, for the privilege of going in and upon his tracks?

A. No, sir.

By Dir. BARTEL:

Q. Does your company give an allowance to the Standard Oil Company at Baton Rouge?

A. I do not know, sir.

(Fol. A-1310.) By Mr. TALLICHET:

Q. If you don't reach the refinery, you don't, do you?

A. If we do not reach their refinery, of course, we would not.

By Dir. BARTEL:

Q. Assuming that the refineries to which you now make allowances were not to permit you to enter their plant and serve the traffic except under conditions which they might outline, would you still feel that that was your obligation?

A. The conditions which they would outline might be satisfactory to us.

Q. Suppose that they required that you assume responsibility?

A. I will say frankly that we do make exceptions, sometimes, to our side track agreement, under unusual conditions, but generally speaking, they are uniform.

683 Q. What would be the reason for an exception?

A. Well, I don't know that I can recite any particular reason for an exception. I will say, generally speaking, that we don't have difficulty in the execution of our standard form of contract, where the industry requests a side track built. That is the original proposition of building the side track, and when we build the side track, we have a right to operate on that side track under the conditions provided for therein. Now, the question of making an allowance comes up later and entirely separate and distinct from the execution of the standard contract.

(Fol. A–1311.) Q. Do you feel it is your obligation to a certain industry over a private track, under conditions which might be outlined by the industry?

A. No, sir; if the industry prescribed conditions that were not satisfactory to us, that we would be required to make them an allowance for performing the delivery of a pick-up service on line haul traffic (p. 5517).

J. H. TALLICHET was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5519):

DIRECT EXAMINATION

My name is J. H. Tallichet, and I am one of the general counsel for the Texas & New Orleans Railroad Company, and have been for a good many years, since about 1909; before that, I was local attorney.

In passing on these allowances, and especially on the first one, that is, the Magnolia Petroleum Company, I went into the whole matter quite fully and have kept more or less in touch with it since

684 the beginning. When the proposal was made to us that we make the allowance in lieu of doing the switching (fol. A–1314) service ourselves at Chaison, I originally had a rather unfavorable impression of it, probably because it was a new thing and I don't like new things; however, I went into it and reached the conclusion that within certain limits it might be legally done and properly done. The limits were, first, that the service for which we were to make the allowance must be done which we were legally bound to perform, that is to say, that it must not be an intraplant switching and must not be some unreasonable service or some service that went beyond our duty, that is, beyond what we were paid for as a part of the line haul charge. The second condition, that the allowance must not exceed the cost to us, that is, what we could

do the work for ourselves, and that to be abundantly safe in such allowance, it was highly advisable that the allowance should be materially less than what our cost would be, that especially where there was likely to be fluctuations in our case; third, that the allowance must not exceed the cost to the industry, and where there was likely to be fluctuations, as is generally the case, it ought, if possible, to be materially under that cost. That in determining these things, we should make, wherever necessary and possible, a very careful check to ascertain the cost, but the best way to go about it was, first, to ascertain the cost to the industry, and if it was entirely clear beyond question that that was materially less than our own cost, it would not be necessary to make any extended or expensive test of our own (fol. A–1315), but in case of doubt, that such test ought to and needs must be made. Within those limits, I advised our people—and I may add that I am satisfied they acted on this advice—that the actual amount is one that should be settled by negotiation, and that it might properly be represented to the industries that they might very well be willing to do the work at somewhat
685 less than their average cost, because there were some advantages to them, not necessarily in getting the work done exactly when they wanted it and in exactly the way they wanted it, and, generally, that has worked out that way. I advised our people also that I did not think there was any question of undue preference or anything of that kind about these allowances and, as a matter of law, there was no necessity why, if one oil company got 90 cents at one place, why any other should get 90 cents, or any other particular figure at any other place; that is a matter of law, but I also advised them as a practical matter I thought it was desirable that these allowances should be as stable as possible, they should not be working back and forth, a constant seesawing, because that would cause friction, and it was advisable to keep everybody quiet, and if the allowance did not transcend these rules I have spoken of, or if it did not result in any more expense to us than we could do it for or not put the industry to so much, it would be in the nature of a special allowance or rebate, but they should try to get like industries to accept like amounts, and I think (fol. A–1316) that is the reason that the 90 cents prevails among the several oil companies (p. 5521).

Now, on the question that the service must be one which the carrier is legally bound to perform—that was especially a live question at the time of the beginning and when the tests to ascertain the cost to the industry were being run. It struck me at the beginning, as I think it would probably strike anyone at first glance, that we had either been doing for these large oil companies and other industries a great deal of work inside of their plants that we did not do for ordinary industries and where we had not been doing the work that they were calling on us and expecting us to pay for a great deal of work that we did not do for other
686 industries, but, on reflection and consideration, not on the work that we did for this industry or that industry, but

taking the work that we do for a group of industries, say Beaumont or Houston, which would handle annually about the same volume of business at this industry or that industry, I concluded that we should consider the gross amount, not merely shifting our drag into their track, but that we must consider the work done in moving from our yards to a group of industries possibly equal in area or at least equal in the business they handled to these refineries. Well, when we looked into that, we found that the refineries were about the cheapest and the best places, from our standpoint, to receive and deliver cars, because there was not a very great variety in the kind of commodities handle nor any very wide differences in the places where we had to place the (fol. A–1317) cars, so that we reached the conclusion that in making these cost studies the whole work was to be done, excluding intraplant service and excluding, if there were any places where, on account of surrounding conditions or on account of track conditions, curvature or something of that kind, we could not get in, and excluding also places where for their own reasons the industry or refinery would not let us in, and that was what governed us on that. Now, as a part of the work we were doing for them or paying to be done, and considering whether it was our job or somebody else's, there comes in logically the situations of a group of sugar refineries in Louisiana that are referred to on Page 3 of our return to the questionnaire to the Commission, and a group of quarriers referred to on Page 4. I reached this conclusion and so advised our people, that the industry was entitled to only spot a reasonable place, and were only entitled to that spot when we were ready to give it, that it was not to require us to discharge a part of the duties of plant operation. For example,

687 at these sugar refineries, the method of unloading cane at the crusher is to shove up one cars and unload it, and shove up another one and unload it; it requires the constant service of an engine, and we are of the opinion that that is not a carrier obligation, that if the industry, if it wants that done, should provide its own engine or some other means of moving those car. The same thing, (fol. A–1318), only reversed, in the case of the quarries, gravel and sand pits; that, of course, is a constant placing of cars under the chutes for unloading, and if they wanted that service, it would be up to them to provide it; we could run them in on a spot at the gravel pit, if they had chutes under every pit, we could place them there, but there was no obligation to go any further. So also at these refineries. For example, a rather strange example—if, for example, the refinery has simply one or only a few places to unload cars and had to constantly be moving the cars for loading or unloading, but that that was a plant operation and not a carrier obligation and we would not pay for it (p. 5522).

For example, take a refinery with a track for loading gasoline, holding eighteen cars—those cars can be loaded in an hour or two and those cars have to be moved and additional cars moved in—we

would fill the loading track and put the other cars at some convenient place and go on about our business. I do not think we are paying an allowance for those cars that we have to set aside and are not spotted on the loaded track. It is my judgment that to place these cars that had been set aside on the loading track after the eighteen cars had been moved would be a second movement and not our obligation, that is, the second movement is an intraplant movement and if it is ever worked into our cost figures, we feel certain that the allowance is enough to cover that loss.

We make no charge for empty cars in any case. The indus-
688 try is entitled to one placement, and we think the line has to be drawn somewhere between what is a plant operation and a carrier's obligation. Placing an empty car is one placement. The allowance is really compensation for placing an empty and pulling a load. You might consider that you have worked in something, that there is a second movement from the place where you put the car first, or the place where it is moved at the instance of the industry, whether it be a movement as a load or an empty. We have attempted in all cases to get enough under the figure that the industry makes, so that the allowance is not in excess of the actual cost to the industry, because, mark you, lots of these fellows say more than 90 cents or more than $1.00 or more than $1.50, whatever it is. However, we have in all instances held them down as low as possible for ordinary rules of business.

In figuring the cost per car, the empties would be disregarded but if you counted the empties where there is an allowance of 90 cents, it would be 45 cents for a load and 45 cents for delivering the empties. So that, if you divide the allowance by the total number of loaded cars, your allowance is increased (p. 5525).

We are not charged, as I understand it, with any duty of helping the industry to operate its plant. We are simply charged with furnishing the industry with cars at some reasonable place, a convenient place. A reasonable or convenient place is generally determined by custom, or more probably by mutual convenience. We do not want at any industry to go any deeper down in the plant, or take any more of our crew's time than we can help and at the same time keeping the patrons satisfied. The sugar mills, quarries or gravel pits, as Mr. Meeks testified, I do not believe, want to maintain any stronger track or more expensive track than they need for their own purposes. They do not want to be interfered with in the
689 performance of their own work, so as a practical matter the plant superintendent or foreman would say, "Well, here is a good place to put the cars."

What constitutes the common carrier service must, of necessity, depend upon the circumstances and conditions at each particular industry.

There may be some cases where it is our obligation to serve the plant and because of plant disability we make some arrangements

with the plant to perform the work because the plant engine is light and our engine is heavy. I only know of one instance on our line where our service to an industry is limited by track conditions, and that is the Kirby Lumber Company at Voth (p. 5527).

Where the physical conditions of the industrial track are such as to prevent the carrier from performing the switching, and such condition can be remedied—this would not prevent the carrier from performing the switching, but if it were something that could not be remedied, I think that would be the test. In other words, it would be idle to require the industry to fix up its track to accommodate our engine if our engines were not going to make use of those tracks. It is a question of fact, or possibly a mixed question of fact and law, where the plant obligation begins and the carrier obligation ends, and I think it has to be settled in most instances on the facts in a particular case. The test we apply to the oil industry is the same we would apply to any industry under like circumstances (p. 5529).

I think, as a matter of law, if we put the cars in the plant on any track, we have discharged our duty. As a practical matter, we would either do that or hold the cars out on constructive placement and put them in later on. If a train arrived with 30 cars for a shipper, the shipper could order eighteen of the cars delivered and we would hold the rest of them in our yards subject to constructive placement. A subsequent order to spot the twelve cars would be within the
obligation of the carrier, and that is the way it would likely
690 be handled, rather than the theoretical way I spoke of, where
they just shove them in on some other track. My experience has been when these companies are getting flush production, they generally have the facilities to unload the cars (p. 5532).

Rule 3–E of the Demurrage Rules provides that on cars to be delivered on industrial interchange tracks where the industry does the spotting with its own power that free time will begin to run from 7:00 A. M. after placing on the interchange track—whether or not there can be a third delivery under the line haul rates in that case—I would say that where a delivery is made on these interchange tracks, that is a delivery for all purposes.

As to why the T. & N. O. makes an allowance to the Magnolia Company after the cars have been delivered on the interchange track—we consider that as having made one spot of the cars, but on condition—the condition being that we will place the cars on the interchange and that will be the end of our responsibility and the beginning of their responsibility for demurrage and liability, but all on condition that we pay them for the added movement beyond. The cars are actually placed when they are delivered on the interchange track. The same rule applies at the sand and gravel pits where no allowance is made (p. 5535).

When we bring thirty cars to the plant of the Oil Company and can only spot eighteen of those cars for loading, the remaining twelve are placed on some other track within the plant or we may hold

them on constructive placement. I do not consider it our duty to later place the remaining twelve cars that have been placed on another track in the plant at some spot for accessible loading.

When we put the cars on an interchange track, under so-called constructive delivery, because of some disability on the part of the industry to receive them, demurrage begins to run.

691 If, instead of holding the cars under constructive placement or leaving them on the interchange track, we can shove them in the plant half on one track and half on another track, then the carrier's work is finished. I think we are bound to go inside of the plant (p. 5538).

J. D. HURST, Traffic Representative, Magnolia Petroleum Company was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5664):

DIRECT EXAMINATION

I am employed by the Magnolia Petroleum Company as traffic representative at Chaison, Texas. I have been connected with the Magnolia Company since May 1918.

During 1918 I spent a great deal of time in checking and handling of freight.

In the early part of 1921 the volume of our business had grown considerably and I was called upon to make investigations with reference to the handling of our cars in the yards, switching, etc. In the course of my investigations I found we owned and operated two very small engines, one of which was constantly being repaired, and it was necessary to secure some additional motive power. I found that our superintendent without taking the matter up with any member of the Traffic Department, had rented a switch engine from the T. & N. O. Railroad Company at so much per day.

This rented engine performed strictly commercial service, and had no difficulty in operating over our tracks as they existed at that time. Our tracks are in a much better condition at this time than they were in 1921. I am familiar with the track lay out at this plant.

692 A map showing the track lay out in the plant was received in evidence and marked "Exhibit A–72, Witness Hurst" (p. 5665).

The line of the T. & N. O. entering the plant at Chaison is shown on the map in Block E–19 and runs north approximately 700 feet, turning west, going over part of the K. C. S. tracks to Block F–16 and curving northwest at Block G–16, proceed north to our front or main gate, which is shown in Block G–13.

The T. & N. O. formerly entered the plant, in the same manner down to the eastern Block E–16, and connected with a track in Block E–15, numbered 40, and continued north to Block E–12, at which point it curved west, passing the square now shown in red as covered up and entered our plant in that manner going on west

over to Block E-12, where there now appears the number 16. At the location shown by numbe 16 the T. & N. O. received and delivered cars to the industry (p. 5666).

There is a very steep grade on the track just referred to at the point shown by the red block. This track is not used at all now.

The Texarkana & Fort Smith Railway's tracks are shown on the map (exhibit A-72) in the southeast corner of Block I-16 and runs northeast through Block H-15 and enters our plant at the same place as the T. & N. O.

The freight station of the K. C. S. at Chaison is shown in the southeast corner of Block H-14, and a station of the T. & N. O. in the southwest corner of Block G-14 on the map. The approximate distance from the station at Chaison to the most distant point in our plant is less than three-quarters of a mile in any direction. The most distant point is track 13 in Block F-3 and tracks 52 and 53 in Block J-21. The commercial loads would not necessarily be
693 loaded at these points because there is nothing but coke and that can be loaded at a closer point. The total mileage in the plant is a fraction less than ten miles. The weight of the rails is from 75 to 90 pounds. We have some rails as light as 56 pounds. In each case where the light rail is used, it is strictly plant service, that is, loading and unloading of coke. There is no place in the plant where 56 pound rail is used for spotting commercial cars. There might, however, be an exceptional car spotted on the light weight rail. It has been the policy to gradually improve the weight of the rail.

The newest rails in the plant are in the make-up and break-up yard, shown on the map as tracks 1, 2, 3, 4, and 5, and our loading racks, shown on the map as tracks 6, 7, 8, and 9. These are 90 pound rail. The south plant, as we call it, is 75 and 80 pound rail. That is four or five years old.

Our track extends 210 feet outside of our main gate and connects with the railroad track. The railroads own no track inside of our plant. The plant is enclosed by a fence.

As I have stated before, both roads enter our plant at the same gate, and when they come into our yards the cars will be spotted on one of the tracks shown as 1, 2, 3, 4, or 5, and the outbound train consisting of loaded cars and empty cars that have been unloaded will be picked up by the carrier on one of those same tracks. We have no special track for the K. C. S. or T. & N. O. (p. 5668).

It takes a crew about 15 minutes to come in and set out a train and pick up an outbound train. Our yardmaster will tell the road crew on which track to set the inbound cars and on which track to pick up the outbound cars.

The industry's engine breaks up the train after it has been set out by the line haul engine, and spots the empties at various
694 points for loading and the loaded cars at various points for unloading. Our engine also picks up the outbound loads

from various loading points and the empties from various unloading points, for outbound movement, makes up the train, so that very little time is required to move the train from our tracks.

The principal inbound commodities are: sulphuric acid, compound supplies, such as prime tallow, horse fat, asbestos fibre, lead oleate, burlap bags, caustic soda, Fuller's earth, knocked down boxes, tin cans; barrels, new; barrels, old; pipe, crude oil, casinghead gasoline, machinery, steel, lumber, Epsom salts, ammonia, lime, sand, gravel, brick, asbestos pipe covering, asbestos cement, soda ash, and car wheels.

The principal outbound commodities are: gasoline, kerosene, naphtha, light fuel oil, lubricating oil in tank cars, heavy fuel, paraffin wax in tank cars, paraffin wax in box cars, lubricating oil in packages, greases, coke, briquets, lump coke, sulphuric acid, scrap iron, and wheels, car wheels (p. 5670).

In addition to tank car equipment we have a capacity for 75 or 80 box cars that we have to spot for loading. We can load about 105 tank cars at one time. Light oils, such as gasoline, cleaning naphtha, light fuel, and kerosene is loaded at loading racks on tracks 6, 7, 8, and 9. These four tracks will hold 66 cars for loading, that is, 66 car spots. We can load any one of those cars with any one of these commodities without shifting the cars.

Heavy fuel oil is loaded on tracks 12 and 13, shown in Block F–3. The capacity of that loading rack is about 12 cars. At one time we could load 20 cars, but we cut off part of that track. Tank cars of lubricating oil are loaded on tracks 35 and 37 in Block F–13, and the capacity of that loading rack is 12 cars.

695 Tracks 1, 2, 3, 4, and 5 are connected at both ends, so that the train may be broken up and the cars shoved from either end of the track. The same thing applies to the loading tracks 6, 7, 8, and 9, so that we have each end available for the make-up and break-up of the train and the spotting of cars.

If the switching service should be performed by the carriers only one of those yard tracks would be necessary. In other words, we would have four useless tracks (p. 5672).

Track 29, shown in Blocks E– and F–12 for spotting box or coal cars, serving the barrel house, grease plant, wax moulding room, and filter building, can accommodate fifteen cars.

To get from either track 1, 2, 3, or 4 to track 29, we would go in on track 23 down to track 25 at about the intersection of the T. & F. S., back in on track 25 to track 27, back up track 27 and track 28 which is a cross over to track 29; or you can go west on track 27 to where it joins track 29, and come in that way.

Track 24 switches off of track 23, on the north side, in Block F-12 on the border of track 11, where we load car wheels and other manufactured articles. This track holds three cars.

Coke is loaded on tracks 52 and 53. These tracks are about one-half mile long. Track 54 is used for loading coke briquets. This track is shown as being in Block H-21, and will hold three cars.

Track 40, shown in Block E-15, is used to load scrap iron, and will hold three cars.

Empty box cars or gondolas to be spotted on tracks 52 and 53 are placed by inbound trains on tracks 1, 2, 3, 4, and 5.

696 CROSS EXAMINATION

The Magnolia Petroleum Company's tracks are shown on the map (exhibit A–72) by numbers in the red circles.

There are approximately 25 loading and unloading points within the plant.

The cars spotted on tracks 6, 7, 8, and 9 can be loaded with any one of four commodities without placing the cars at any particular point—just so the cars are within the clear. Most of the outbound commodities are loaded from loading racks. Tallow, for instance, is an inbound commodity and is unloaded at our grease plant, on track 29, over a platform. The grease plant has five doors. The cars do not have to be spotted opposite any particular door—just so the car is alongside the platform. Our engine forentan spots those cars as near the point of unloading as possible.

Tank cars for loading paraffin wax can only be spotted at one particular spot—on track 29. We have a tipple on track 24 which will take care of three cars, and those cars must be spotted within a short distance of the spot.

In reaching certain loading or unloading points we have to cross the tracks of the Kansas City Southern. We cross track 45 in Block G-16, known as the K. C. S. saw mill spur (p. 5679).

Inbound trains are not classified upon reaching the industry. We have to break up the train, in cuts, and distribute to the various points of loading and unloading. It is necessary in this operation to single out certain sizes of empties or empty box cars to comply with the tariff requirements.

Since I have been connected with the industry, both the K. C. S. and the T. & N. O. have performed some spotting service. At times the T. & N. O. use their equipment to switch the fuel oil loading
697 rack, on tracks 12 and 13 in Block F-3. That was at a time when our power, I presume, was in a bad state of repair (p. 5680).

Assuming that we had only one receiving track, instead of five, and the carriers undertook to perform the spotting, they would have to have some tracks somewhere else. I cannot see any reason why the Magnolia Company should furnish them tracks for a break-up and make-up yard. There is certain switching that must be done. It would be impossible for the carriers to place the loads direct without setting some cars out, unless tracks were provided as a means of getting around the empties that had been unloaded the previous day (p. 5681).

If we had certain cars coming in to be placed on tracks 1, 2, 3, 4, or 5, and certain cars on track 13, and certain cars to our grease plant, it would be necessary for the carrier to do one or two things: first, drop our loading tanks at tracks 1, 2, 3, 4, or 5 and then drop the cars on track 13 or 14, and then move back over those same tracks to track 28 or 29. There would be an overlapping of movement in that case.

Q. Is your industry operated to answer the convenience, or respond to the convenience of your industrial railroad operations, or is your industrial railroad operation conducted so as to respond to the needs of the industry, which?

A. The industry is much more important than our industrial railroad operation.

Q. And you endeavor to operate that railroad to meet the needs of the industry?

A. It is a strict coordination, one works with the other.

Q. Do you undertake to have your industrial railroad, your plant tracks and your locomotives, operate in a manner that will serve the requirements of the industry at all times?

A. Yes, sir (p. 5684).

Q. If the engineer of the Kansas City Southern were in your plant once a day to spot the plant, both loading and unloading,
698 would that meet your requirements?

A. I think it would, because I think they would be there all day.

Q. That is the answer, then; he would require an engine there all day?

A. If they performed the service that we are entitled to, according to the line haul rate, I believe it would require nearly a day.

Q. And would you also have an engine from the T. & N. O.?

A. I believe it would require one engine. I don't say which one it would be.

Q. Of course, you would not expect the T. & N. O. engine to be doing the K. C. S. work and vice versa?

A. They have done it in some cases; I don't know whether it is an agreeable arrangement or not (p. 5686).

W. M. Maddox, Traffic Manager, Magnolia Petroleum Company, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5687):

DIRECT EXAMINATION

I am traffic manager of the Magnolia Company, and have been with that company approximately twenty-one years. Prior to coming with the Magnolia Company, I was employed by the H. & T. C., and since coming with the Magnolia Company I have been in traffic work from the beginning. I was in the Accounting and Statistical Department from 1911 to 1914; in the Traffic Department from 1914

to 1917; in the Statistical, Accounting and Treasury Department from 1917 to 1920; I returned to the Traffic Department as Assistant Traffic Manager and occupied that position from March 1920 until January 1, 1931, when I was promoted to Traffic Manager.

699 I have had occasions to supervise cost studies and cost records in connection with the switching of our plant at Chaison.

So far as I have been able to locate from the record (fol. A–1551), when the present plant at Chaison, Texas, or as it existed in 1911, was acquired by the Magnolia Petroleum Company, it had one small so-called saddle-back type engine or logging engine, I think it is ordinarily referred to, and my first visit to the plant was in about 1914, at which time we were constructing some wharves at the plant for handling cargo. In connection with that construction work, it seems that another engine of approximately the same type was acquired, but of perhaps a little later design. At that time only one railroad entered our plant; that was the T. & F. S.; later on, I believe early in 1915, the T. & N. O. came into our plant, as originally outlined by Mr. Hurst on the map. After the completion of the wharves it developed that these two switch engines were capable of performing more work than was required by the intraplant operations, and it seems that it became a practice, perhaps through the request of some foreman or individual in the particular section of the plant, for the plant locomotives to perform some commercial switches. That seemed to grow—of course, I have no personal knowledge of it; I am speaking of the reports that were given me during that time; it grew, and during the war period, when the switching facilities in the Beaumont area were taxed, apparently beyond their limits, the Magnolia Petroleum Company was a so-called War industry, and getting out all the material it could, reached the point where it was performing not only all intraplant service but (fol. A–1552) practically all commercial service. In 1921, the time measured by Mr. Hurst at the beginning of his investigation, I was in Beaumont, and discussing the switching situation, or the switching cost, rather, with our Assistant

700 Treasurer, Mr. W. H. Marshbank, and my attention was directed to the switching of that plant. Upon making a detailed inquiry of just what work our switch engine was performing, or some engines we had rented from the railroad to supplement our service in order to perform all of the service, that had a considerable effect on the cost. It seemed to me that we were doing a considerable amount of work that was normally considered the duty of the railroads as similar service, that is, spotting the cars, moving the loads and spotting the loads and removing the empties was there being performed entirely by the railroads at our Corsicana refinery and our Fort Worth refinery, so I started an investigation to just get a picture of what we were doing, whether we were doing more than we should or doing something that the railroads should do, and it developed that we were doing a great deal of work which we

thought was the duty of the railroad. The matter was then discussed with Mr. E. E. Plumley, Vice President in charge of all refinery operations, for the purpose of working out a solution of the situation and cutting down the expense, which resulted in my calling on Mr. C. K. Dunlap, who was then Traffic Manager of the Southern Pacific Railroad, and the question that the Southern Pacific and, of course, we (fol. A-1553), wanted the T. & F. S. to join them, making inspection of our plant, have their operating officials come in there and inspect our plant and determine if a great deal of the service which we thought was properly the duty of the railroads was really the duty of the railroads. In the latter part of December, 1921, we received a message to meet certain officials of the Southern Pacific in Beaumont or Chaison, which is adjacent, for the purpose of discussing the situation (p. 5689).

It was our view to have the railroads, both of them, come in, make an investigation of the service required, and, as they had
701 practically discontinued performing any commercial service whatever, we felt that it would be necessary for us to go over their tracks with them and give them a specific name that would be understood by both railroads, perhaps designating particular locations on the tracks for the spotting, that we thought should be done by the railroads, and not have the tracks operated as they apparently were under nicknamed, as they apparently were, "the pig pen," et cetera, but have specific names so the railroads would know at what particular point to spot certain types of shipments. I believe it was on December 30, 1921, when the Southern Pacific officials, G. S. Waid, Mr. H. G. Mix, and I believe Mr. O. C. Castle, I don't recall whether there were any others or not, came to our plant; we spent the morning or the greater part of it, as a matter of fact, in going over each section of the refinery with the officials (fol. A-1554) of the Southern Pacific, letting them view the operations that were going on. Later, after having inspected the entire track layout, we returned to the office, where, of course, a mutual discussion of the situation to arrive at some solution of the switching problem. Perhaps I should have said that that morning, when we had this conference with the Southern Pacific officials, I had attempted to get in touch with Mr. E. P. Williams, representative of the T. & F. S. Railway, to have him present in response to a request from Mr. J. O. Hamilton, with whom this matter had been discussed in October, as an operating representative of the K. C. S. We were unable to get Mr. Williams over the telephone, he could not be reached, but we proceeded with the inspection of the plant with the Southern Pacific officials. After returning to the office, Mr. Waid, in discussing the problem, stated, or rather, made the observation, I shall put it, or proposition that the Magnolia Petroleum Company undertake to continue the performance of the commercial switching at the Chaison refinery and permit the T. & N. O. Railroad to
702 compensate us for such work. That being entirely foreign to what we had in mind when we stopped the discussion, I, of

course, was not authorized to accept a proposal to be worked out on a proper basis, and requested that I be given an opportunity to submit it to our officials. Further, it would require some discussion as to the time that would be required to perform the service, and what elements should be considered (fol. A–1555) as proper compensation. Mr. Waid, in confirmation of this proposal, in a letter to Mr. E. E. Plumley, made the observation that someone, perhaps I, had stated that it would not take more than an hour or such a matter for the T. & N. O. Railroad Company to perform this switching. That, in turn, was submitted by Mr. Plumley to me for a confirmation of such statement, if I had made it, which I had not, because I had not made a definite investigation or careful investigation to determine what the time would be, and I explained to Mr. Waid that I had not, but I thought the proper thing to do in order to determine the amount of time would be to conduct a test or make an investigation and just test out the time to determine how many engine hours would be required, then if their engine hour cost was definitely known, that would give a factor for consideration for the compensation, provided, of course, an investigation of our plant did not develop that our cost would be somewhat lower than the railroads'. After this little difference arose as to the amount of time that would be required, it was reported that other officials of the T. & N. O. came to our plant in the latter part of February 1922. I was not present and they again went over our plant quite carefully and reported to us that they believed they could do the work in two hours. We were at that time conducting an investigation at our Fort Worth refinery and our Corsicana refinery to determine
703 the amount of time required by the railroads at each of those (fol. A–1556) points for performing the commercial switching service, at those plants where we had no switch power that performed any switching service at all. Our development at Corsicana and Fort Worth developed practically the same time, approximately seven minutes per car, computing the time from the time the switch engine came into our plant until the time it had completed its work and gone out of the plant (p. 5691).

We had made a similar investigation, but we did not have railroad engines or power of the type that the railroads ordinarily employed at our Chaison refinery, so we could not get an accurate comparison of the time required by these engines at Beaumont as contrasted with the service performed at the other plants, but making allowance for the difference in the type of power, we reached the conclusion that it would require seven minutes for a railroad switch engine to perform that service, and the average number of cars as I recall it at that time amounted to approximately 28 commercial loads in and outbound, by the T. & N. O., which at that time was handling approximately seventy-five percent of the commercial business at that plant. Using the time at our Corsicana refinery and our estimate of making allowance in the difference in power at,

Chaison, we computed that it would require one hundred ninety-six minutes working time in our refinery to perform the service. That resulted in another meeting with the operating officials of the T. & N. O. Railroad in Beaumont the latter part of March 1922. Of course, we considered approximately three (fol. A-1557) hours and fifteen minutes time and the railroad still thought that they could perform the service in two hours, and suggested that as their engine cost was approximately $10.00 per hour, that we give consideration to the extent of the equivalent of two switch engine hours per day as compensation for performing the switching service for the T. & N. O. at our Chaison refinery. Upon receiving that concrete proposition from the T. & N. O. Railroad, and it handling the greater amount of the commercial switching at Chaison, we felt that it might be proper to complete the arrangement or at least reach some definite position with the T. & N. O. before taking the matter back for discussion with the T. & F. S. Railway. However, on submission of the proposition of engine hours per day, I figured that it would be necessary for it to have the approval of our executive officers, and we would give it consideration. That was referred to our people and as I understand, was referred to our legal department for the legal department to pass upon the advisability of entering into any such arrangement. After the legal department had given it consideration, it was reported to me that in the opinion of our legal department that such an arrangement would be in no wise illegal providing the compensation was in certain specified limits, one being that it should not exceed the cost to the railroad of performing the service; second, that it should not exceed the cost to the industry of performing the service. This matter was then—but (fol. A-1558), even after making that statement, our legal department further suggested that out of an abundance of precaution it would be, perhaps, advisable to refer the matter to the Interstate Commerce Commission for approval or, at least, an informal ruling with reference thereto. As a result of this suggestion, we called on Mr. S. G. Reed, of the Southern Pacific Lines, who went with me to the legal department of the T. & N. O. Railroad in Houston, Judge Garwood and J. H. Tallichet, and jointly we prepared a statement of the facts as agreed upon covering the situation as we saw it existing at Chaison, Texas. This statement is dated October 28, 1922, and directed to the Interstate Commerce Commission——

704

Mr. HAGERTY. 1923, you say?

705

October 28, 1922, and the Commission under its File No. 15708 on November 21, 1922, replied to our inquiry by letter from Mr. G. B. McGinty, dated November 21, 1922, under File No. 15708, in which he discussed the suggested arrangement as outlined in the statement of October 28th, directed to the Commission, in effect stating, without reading it into the record, that subject to certain limitations it would not be unlawful or illegal in anywise, but stated

that in cases where the Commission had dealt with allowances of this character, that such allowances had been on the per car basis rather than upon an engine hour basis. I should like—do you have a copy of this?

A statement dated October 28, 1922, addressed to the Interstate Commerce Commission and relating to the situation existing at Chaison, Texas, discussing the proposed arrangement between the Magnolia Petroleum Company and the T. & N. O. Railroad for the performance of the switching service at that point and the acceptance of compensation therefor, and the Commission's reply, photostatic copy of the Commission's reply, dated November 21, 1922, under its File No. 15708, was received in evidence and marked "Exhibit A–73, Witness Maddox" (p. 5693).

Upon receipt of the Commission's letter in response to our inquiry, Mr. S. G. Reed, of the Southern Pacific, submitted to me a proposed tariff of the T. & N. O. Railway, that the T. & N. O. Railway would file covering the switching allowances at Chaison, Texas. That proposed tariff stated that the Texas & New Orleans Railroad Company will pay to the Magnolia Petroleum Company an allowance of $10.00 per switching hour, not to exceed two switching hours per day, for performing the switching service on carload traffic to, from, and between loading and unloading tracks, et cetera, at Chaison, Texas. On account of the Commission having stated that in cases where it had been called upon (fol. A–1560) to deal with situations of this kind, the allowance had been made upon a car basis, we suggested to Mr. Reed that we take the average number of cars, approximately 7.7 during the preceding year, divide $20.00 by
706 the number of cars and publish the tariff on a per car basis, which resulted in an approximate charge of 72 cents, provided that would be agreeable to our people. That was merely converting the switch engine hours, the equivalent of $20.00, into the approximate number of cars handled in the preceding year, as I recall it. Mr. S. G. Reed then submitted a proposed form of tariff in which the allowance was stated as 72 cents per car. We thought that this would not only line up directly with the Commission's statement of how matters of that kind had been handled before, but that if 72 cents should be found to be the proper amount per car, that it would, in effect, take care of the increase and decrease in the business, whereas a switching amount of $20.00 per day might exceed and might be far below, with the rise and fall in business. That tariff at 72 cents we were willing to consider with the understanding that in the future or in the event conditions changed that the allowance would be increased or decreased to fit such conditions accordingly. However, we were not agreeable to the tariff being made effective upon statutory notice because we felt that it would be proper and right to refer the same matter to the T. & F. S. Railway Company, so that it might have an opportunity to either perform the switching or relieve itself of any duty it might have by filing

(fol. A–1561) a like tariff allowing a like compensation. We felt that the cost would be identical in connection with the two roads for the simple reason that both enter the plant over the same tracks. Once they come into the plant, there is no difference whatever in their disposition. I tried to get in touch with Mr. G. F. Holden, then Vice President in charge of traffic of the Kansas City Southern Railway, and it seems that he was either in New York or on the way to New Orleans. Being unable to get in touch with him personally at that time, I addressed a letter to him on April 27, 1923, in which I outlined the entire situation as clearly as could be done in an ordinary letter, and I believe that I sent him a copy of the
707 proposed tariff to be filed by the T. & N. O. Railroad, seeking an expression from him as to what the desire of the T. & F. S. Railway would be. On May 1, 1923, I believe it was, Mr. Holden called me on the telephone from Shreveport, Louisiana, after having received my letter, and stated in effect that it seemed to him that it would be a happy solution of the situation, if it would be agreeable to all parties. My next communication, or, that is, my next definite intimation as to what disposition the T. & F. S. wanted to make of its obligation was advice from the T. & F. S. Railway that it would file a like tariff allowing a similar amount. The T. & F. S. Railway's tariff No. 2860, Railroad Commission of Texas No. 43. I. C. C. No. 145, was filed to become effective June 20, 1923, whereas the T. & N. O. Railroad Tariff (fol. A–1562) I. C. C. No. 14–A covering the interstate traffic was filed to become effective May 25, 1923, and T. & N. O. Railroad Company Commission of Texas Tariff No. 168 was filed to become effective on the same date, that is, the 72 cents allowance became effective, both state and interstate, on May 25, 1923 (p. 5695).

Beginning with the 1st of June 1923, while we had made some investigation of our idea of the cost to us of performing the service, still with the beginning of June 1923, we started the accumulation of data with reference to the switching, from which we hoped to gain some idea as to how much it might be costing us in order to determine whether we were willing to continue such an arrangement, knowing that it would be necessary for us to make additional investment in power in order to perform the commercial switching, and we wanted to know, at least, whether it could be worked out on a satisfactory arrangement or whether we would just back off entirely and insist upon the service. Our figures at the close of 1923, which, of course, were not completed, but might carry
708 some inaccuracies as to expense that might have been due to wear and tear prior to June 1, 1923, indicated that it was costing us a great deal more than 72 cents per car. We discussed the matter with the T. & N. O. Railroad for the purpose of securing an increase in the allowance if we were to continue in performing the commercial switching service. There seemed to be an inclination

on the part of the T. & N. O. Railroad to increase the switching allowance, at least until they went into (fol. A–1563) the matter somewhat further than they had gone into it before, and this resulted in the T. & N. O. Railroad coming into our plant jointly with the T. & F. S. Railroad, with whom the same matter of increasing the allowance had been discussed, putting their men on the engines and making a test of the actual time required, and I might state that in the early part of 1924, we had acquired a larger locomotive, principally for performing commercial service, I believe it is a sixty-four ton engine or locomotive, sufficiently heavy to handle practically any drag of cars in that level tetrritory. This engine, as well as I recall engines, *were* followed in the switching by the representatives of the two railroads, as it was reported to me, I was not present during the test, but railroad men rode the switching engine, they allocated every minute of the day from the time this switch engine went on duty until it went off duty in the afternoon, and they computed from that operation the amount of time that was applicable to commercial switching to each railroad and what part of it was intraplant switching in which the railroad, of course, had no interest. From this test that was made during that period, it was found, according to the statement that came to me from the railroads, that taking the engines combined, the sixty-four ton and the saddle-back, taking the time as applied to the operating cost for the months of January and February resulted in
708 an average engine hour cost of $6.85; that during the test period, using the number of cars during the test period (fol. A–1564) as applied to the total engine hours resulted in an engine hour cost of $11.41 per hour, with an average time of 8.85 minutes per loaded car, which indicated a cost to us of $1.01 per loaded car, considering the movement of the empty car to placement and the removal of the load, *of the removal of the load* to unloading point, and the removal of the empty.

I believe this information was submitted to the Railroad Commission of Texas as an exhibit in 1926. About the time that this test was conducted in our plant the Railroad Commission of Texas, under its circular No. 6152, gave notice of a hearing to be held on April 8, 1924, to consider allowances at Port Arthur and Port Neches, Texas, to the Gulf Company and others as well, as the tariffs previously mentioned, making an allowance to the Magnolia Petroleum Company at Chaison, Texas. It appears that the Commission made no formal order as a result of this further hearing, but permitted the tariffs to be filed with it: then effective June 1, 1924, the T. & N. O. Railroad and the T. & F. S. Railway filed tariffs, both to become effective on that date, increasing the allowance to the Magnolia Petroleum Company to 90 cents per car, notwithstanding we had applied for an allowance of $1.00, which we felt might be more nearly in accordance with our cost operations. The other tariffs relating to Port Arthur, I believe, indicate an effective

date of the I. C. C. Tariff T. & N. O., I. C. C. No. 1465, R. C. of Texas—Railroad Commission of Texas 193, effective at (fol. A–1565) Port Arthur, became operative on April 3, 1924. There the allowance has remained up until the present time. However, on April 1, 1926, by Railroad Commission of Texas Circular No. 6863, a hearing was announced on the matter of all allowances by the Railroad Commission of Texas. As a result of that Circular No. 6863 just mentioned and its previous Circular No. 6152 of 1924, the Railroad
710 Commission of Texas, under its Circular No. 6911, rate ruling, rendered an opinion in its Docket No. 2303, April 23, 1926, specifically approving the allowances as a result of the hearing at Austin, Texas, and I should like to introduce at this time a typewritten copy of Railroad Commission of Texas Circular No. 6911, rate ruling, relating to allowances. While this is a typewritten copy, I have compared it with the original in my file and find it to be a true and correct copy of the Circular and Order issued by the Railroad Commission of Texas.

The Order of the Railroad Commission of Texas was received in evidence and marked, "Exhibit A–74, Witness, Maddox" (p. 5698).

Mr. MADDOX. There the matter seems to have rested with regard to any changes up until the first time, and the allowance is now in effect.

When the matter of allowance was first broached to us, being something that we had never had any connection with before, or in this part of the country, we gathered, or rather I had the figures prepared for me by our accountants, showing the number of commercial loads handled at our Chaison, Texas, refinery in the year 1921. The total switching cost which, of (fol. A–1567) course, excludes any expense relating to tracks of any character or kind, it included no taxes, depreciation, interest on investment, general supervision, insurance, et cetera; and this was for the purpose of getting some idea about the cost to us of performing the service. We had no way at that time of dividing the time which is the formula element for determining costs of a particular service so we gave consideration to an approximation of fifty percent commercial and fifty percent intraplant, which would have resulted in a cost of approximately $1.50 per car. We made the same comparison for the year 1922, which would make approximately the same cost of $1.50 per car if we approximated the service of being fifty percent each.
711 However, beginning with June 1, 1923, we made an accurate—

I cannot say that it was accurate, but we made an estimate of the time that was required by commercial service, as we understood it, and as it had been understood by the railroads as properly their duty to do, and the study made in 1923 indicated that 58 percent of the time was commercial service and 42 percent of the time was intraplant service. That was without regard to the movement factor on the different types of engines which, of course, had some effect upon the cost, that we applied that percent to the cost figures of

1921 and 1922, and from that developed some idea of what it had been costing us. I do not think that it was accurate in the way that it was prepared, and I don't know that it would (fol. A–1568) serve any particular purpose, unless you desire a copy of the figures. We are not offering it as an exhibit unless you desire a copy of the figures. We are not offering it as an exhibit unless the Commission wants it.

Mr. HAGERTY. There is no special reason why we would want that in the record.

Mr. MADDOX. It was prepared especially for our own information. Beginning with June 1, 1923, there was an attempt on our part to divide the time accurately between commercial and plant switching. This division, I wish to say, however, was not as rigid, nor was the same amount of care exercised, because we had not been educated to the railroad's schemes, nor did we understand their scheme of dividing time at that period. However, according to our estimate, we arrived at an average cost, based entirely upon the working time of the engine, of approximately $1.22 for 1923 and 1924 combined. That includes the period from the first allowance of 1923 up until March 31, 1924, when the test was concluded. Beginning with April 1, 1924, the men at our refinery were instructed to turn in and to keep a log of the switching operations in accordance with the
712 plan which the railroads themselves used in arriving at the test figures. They have been directed to do that since, and each month there is submitted to me a statement showing the total engine hours of each engine, the amount of time assigned to commercial switching, the amount of time assigned to intraplant (fol. A–1569) switching, the amount of time required for giving those engines hostler service or engine house service, in ordinary railway terms, between the hours of 7:00 and 8:00 o'clock each morning before they go to work, and the amount of idle time. This is a statement which I wish to submit as an exhibit, covering the years 1923 from June 1st to December 31, 1924.

Dir. BARTEL. It will be received as Exhibit A–75.

The statement was received in evidence and marked "Exhibit A–75, Witness Maddox." It is forwarded herewith.

Mr. MADDOX. This part of the statement covering part of 1923 was our foundation for asking for a considerable increase in the switching allowance. After the railroads submitted their scheme of keeping time, there was a slight difference of opinion with respect to some of it. No allowance had been made in their estimate of cost for the engine house service which amounted to approximately $5.60 per day for the period between 7:00 and 8:00 o'clock, when a part of the crew came on duty for the purpose of wiping the engines, fueling, water, sand, and any work of that character ordinarily given a locomotive in the roundhouse, and the computation of time under their plan started, of course, when their engines came out and started to work. We sought, finally, to get an idea of what it might be

costing us, that it would be proper to include that as well as a reasonable proportion of the (fol. A–1570) idle time, so that there were two cost figures shown per car, one of $1.22, which is based upon the net working time without any engine-house service or idle time, and another figure of $1.47, which includes those factors
713 as well as a portion of the idle time. These costs were continued and the count basis and, of course, expense converted into engine hour cost and per car cost through the years 1925, 1926, 1927, 1928, and 1929, resulting in an average cost for working time alone of $1.22. I would like now to submit a statement showing those costs as an exhibit.

Dir. BARTEL. It will be received as Exhibit A–76.

The statement was received in evidence and marked "Exhibit A–76, Witness Maddox." It is forwarded herewith (p. 5700).

Mr. MADDOX. There is one item that may call for some comment, in that there was an accident to one engine and I have, merely for the purpose of this exhibit, appropriated or prorated the proportion of that engine's time for that year used in commercial service as a factor for giving consideration to that portion of the damages we were compelled to pay or that we did pay in connection with the accident, so that it would be possible to determine the cost without consideration of that accident as a factor and that the proportion of the cost of operating that engine and the proportion of the time of that engine used as a factor to proportion that amount of damages.

By Mr. WILKERSON:

In other words, you figured it both ways?

(Fol. A–1571.) Yes, sir; and it will be noted from this exhibit, say starting back in 1921 and 1922, that we were handling approximately ten or eleven thousand cars, commercial cars, in our Chaison refinery. This continued as the years went by, and in 1929, after the tracks previously mentioned on the map as 1, 2, 3, 4, and 5, had been built of heavy steel, so it was possible to switch from both ends, and tracks 6 to 9 had been connected at both ends, and at the same time our old engines had practically worn out and we had acquired another at practically cost, we considered that we
714 had accomplished every economy we could, so these details for the subsequent years are not carried out to the extent that they are here. However, it was possible to learn or actually accumulate through our accounting machinery the total cost of our switching in the years 1930 and 1931. The number of cars handled in 1930 approximated that of 1925, being 140 cars less than 1925. However, in 1931, the number of cars, handled had dropped approximately nine thousand. We do have the total number of our figures during those years that is divided as to each engine and using the pro rata of time, the proportion of time of each engine in commercial service for the year 1929, which is approximately the same, we made a

division of the cost, and it is not very far from the figures shown for 1929, when we had actual time distribution of the engines. However, using that same factor for distributing the (fol. A–1572) costs for 1931 would indicate that with a drop of nine thousand cars our cost of switching has gone up $1.38 per car, which is very close, which accounts for my reason for being particularly interested in the cost to the particular terminal shown for performing the switching for the Sinclair Refining Company of somewhere in the neighborhood of $1.30 per car. I should like to submit this exhibit, although I cannot give it the same value that I would the other exhibits, if you think it would be of any benefit.

Dir. BARTEL. It will be received as Exhibit A–77.

The statement was received in evidence and marked "Exhibit A–77, Witness Maddox.". It is forwarded herewith.

Mr. MADDOX. And I might state that each year since, I believe, 1923—June 1923—we have reported to the railroad companies our per car cost for each year in order that the railroad companies might be advised that what we deemed to be our cost based upon their formula of distributing time, and I might say, that it
715 will be noted from the investigation on the Exhibit A–76 for the year 1925, the cost working time alone indicates the cost to our refinery of $1.02, the railroad taking the expense items in connection with our locomotives, using their plant formula, computed the cost of $1.01. This is simply to indicate how closely we have followed the formula of the railroads for determining the time (p. 5702).

If the carriers switch the plant and pull the loads from the loading rack, that track would be available for empties; that is the normal operation, that is what is done at the plant by the railroads performing the service, except, to this extent, that the railroads may store the empty cars on their own side track or they may elect to bring a part of them adjacent to the rack so as to avoid having too many cars to handle at one time when they switch the racks. This operation is the same as the service performed at our loading racks at Corsicana, Fort Worth, Luling, and other places where the railroads perform all the switching service. If our loading racks are spotted with empty cars, we could load them all in one day. We would like to have it that way.

Q. Assuming that business was good and required more than one spot, you, of course, would require the carriers to give you any number of spots necessary?

A. I do not say that we would require it, but we would be very insistent about it, and I imagine, as a service organization, they would be very likely to do it (p. 5704).

CROSS EXAMINATION

In 1921 we handled 10,981 cars; in 1922, 10,426 cars; in the period from June 1, 1923, to March 31, 1924, 10,898 cars and from April 1, 1924, to December 31, 1924, inclusive, we handled 11,217 cars.

716 I came with the Magnolia Company in 1911, but my attention was not attracted to this terminal situation until 1921. It so happened that the character of my duties was such that matters of this kind did no come under my observation until March 1920, when I returned to our Traffic Department as assistant traffic manager (p. 5705).

With respect to the average cost per car as shown in exhibit A-75—the engine time was segregated, according to the plan submitted by the railroad company, between commercial work and intraplant service. In cases where there might be a movement of a car in both classes of service, the time is equally divided between commercial and intraplant service.

Then the accumulated division of time for months and the year, showing on the one hand, the time the engine was engaged in intraplant work, as one time factor, and the time the engine was engaged in handling commercial loads as another time factor. The average cost of operating the engine was applied to the commercial time factor. That gave us the engine hour cost in the commercial service. It would have been possible, if it had ever occurred to me, to keep a record showing the cost for intraplant service.

The idle time, as I explained, cannot be included in either the intraplant or commercial time, but we have assigned a proportionate amount of idle time against plant time and commercial time.

Column No. 2, under "Engine Hours" represents a proportionate amount of idle time added to the figures shown in column No. 1. That was done for this reason; there was a difference in our viewpoint of what it had cost us, and we will say that in the average cost, shown under average cost per car, that we took the viewpoint that it cost us $1.42, but the railroads, from their viewpoint, feel no responsibility above the cost in column No. 1.

717 Engine hour cost was applied against the factor of commercial time as was applied to the industrial time (p. 5711).

As to why we agreed to take 90 cents when our costs, according to our own calculations, were somewhat higher—there were two important factors that were given consideration—one (fol. A-1588) is that when a test is made, it becomes history. If you use history to consider the operation in the future, it may be and it is very likely inexact.

I was carefully informed by our legal department that the amount of compensation that we might receive should not exceed the lower of the two, first, the cost to the carrier for performing the service; second, the cost to the industry for performing the service. If we exceeded either one of those, we would be going beyond the limit that had been considered a proper amount to allow for such service, not exercising the precautions of an ordinary prudent person. It would be desirable to stay well within rather than meet with a violation, or apparent violation, under the limits as stated by our legal department.

The 90 cents allowance was arrived at, as stated this morning, as a working basis and as a result of the Texas Railroad Commission's Order. I had suggested $1.00, which I still feel we are entitled to.

If I were going to figure the cost per car of conducting the operations on our own track I would include the tracks and their maintenance and depreciation and taxes. We have another item of cost which we have at our Corsicana, Fort Worth, and Luling refineries, where we perform no switching service—the railroads perform it all. The handling of commercial cars created a part of the costs that I have not included in any of them. We made our investment,
718 maintenance, taxes, etc., on about a mile of track as delineated by Mr. Hurst, which they accepted on the basis of $3.00 per running foot, 6,400 feet would be approximately $20,000 investment in the tracks. We have never included any of those things against the commercial switching, and it is my opinion that those tracks were put there for the purpose of expediting the service. Perhaps if we included that cost in the 1929 operation we might find that we did not exercise good business judgment and it would bring these figures up to what they were before (p. 5713).

We would own the industrial tracks, whether we performed the switching with our engines or whether the railroads performed it with their engines. We were ready to have the railroads perform the service, but expected the compensation rather than the service.

It is my conception that the compensation for performing the service should not include any item except those items of cost that the carrier itself would have to bear. The carrier does not bear the expense of constructing and maintaining tracks in our other refineries away from their right-of-way. It is not a common practice in this country, and it has not been for some years. The expense attaches to the refineries in preparing tracks so that it can be served, regardless of whether the carrier performs the service or we perform it. The only expense that the carrier would bear in fulfilling its obligation would be merely the transportation over tracks which it would be our duty to construct to give us service. If we did not have our tracks, we would not consider that the railroads owed us any service. It would be our duty to get in a position to have such service furnished (p. 5715).

Whether we would expect the same kind of service if the carrier switched the plant, as to point of time and quality, as we get with our own industrial power—I don't imagine so—the time might
719 have to meet the convenience of the railroad. The quality of service, if the railroad performed it, would have to be the same. We would do just what we do at our Corsicana and Fort Worth refineries, that is we would expect the service at the time and quality that the railroad gives us. We might complain if we found that they were keeping an engine a full day in the Sinclair Refining Plant or some other refinery. We would think we were entitled to service equally as good as accorded other industries with the same volume of business.

Q. Have you any preference, based upon your experience at those plants, or any plant, whether the industry shall continue to perform the service under the allowance or whether you would rather have the carrier's power?

A. I think the situation answers the question. It has been offered to us and we have accepted it; we are not fully satisfied with it, but we are going along. At our other plants we are having the railroads do it.

Q. When you state you are not fully satisfied, does that dissatisfaction relate to the amount of the allowance or does it relate to the fact that you get along a little better or that you would prefer to have the railroads perform the service?

A. If there was any means by which we could be compensated to the exact penny without transgressing our limits, we would prefer to do it ourselves, but, on the other hand, with the conditions existing, that has never been our attitude.

Q. Is there any reason why you cannot be compensated upon an exact basis?

A. That is a legal question that I can't answer.

720 The total cost of operating our three engines, as shown on exhibit A-77, is $26,975.39 for commercial time. The total cost of operating those engines is $65,000. During the period covered by the exhibit we handled 24,981 commercial cars. We received an allowance of 90 cents per car which would make the amount of the allowance received $23,482.90, or the cost approximately $3,492.49 in excess of our allowance (p. 5719).

Mr. TALLICHET. The Texas & New Orleans accepts as entirely accurate the historical data and the data we received as to the tariffs, which has been put in evidence by Mr. Maddox and by Mr. Hurst, of the Magnolia Petroleum Company, and therefore we do not propose to offer a traffic witness, although there is one here who can go through the same thing if desired. We do wish to offer one operating witness on one or two points that are not covered.

Dir. BARTEL. You may proceed (5725).

T. H. MEEKS was recalled, and testified as follows (Vol. 6, p. 5725):

DIRECT EXAMINATION

I am familiar with the conditions at the Magnolia Petroleum Company, and concur in what Mr. Maddox has said with regard

721 to the history of the allowance. The allowance made to the Magnolia Company is materially less than it would cost the T. & N. O. to render the service. The allowance is also less than what it costs the Magnolia Company to perform the service.

Under a previous arrangement with the Magnolia Company we entered the plant through what the Oil Company witness described as the front gate. It is quite a little haul up grade to the gate, and there is a sharp curve of thirty-five degrees to be negotiated to get into the plant. We couldn't negotiate that curve with sufficient

momentum to get a good sized train up that hill, and as a consequence, we made arrangements for a connection with the K. C. S. on what is known as the K. C. S. mill track, and running over that track for a short distance, thence over the K. C. S.'s track which leads into the refinery at the front gate. That arrangement was made in 1921 or 1922 and since that time we have been operating over that route in reaching the industry. The crossing over the K. C. S. mill track, leading into the refinery on the opposite side, was taken out because we had no further use for it.

As to the method used at the time we switched the plant—I am reading a railroad map which shows a siding that will hold about forty cars, something like a quarter of a mile from the plant, and the map that the director has does not show this siding. We constructed that siding for the purpose of setting out our cars moving into the plant, in order that the engine might go into the plant light, and pull the loads and empties that are to move out and place them on the main line; get in behind the cars that are moving into the plant and shove them in to make delivery. That is the process that we would follow if we should again undertake to perform all the service that is regarded as the obligation of the carrier. I think we should again install this crossing at the K. C. S. mill plant and get in from both sides, because that would shorten the dis-
722 tance. It is the carrier's obligation in this part of the country to put the cars where the shipper wants them (p. 5727).

I have worked for the Mobile and Ohio; New Orleans & Northeastern; Gulf & Ship Island; four different times for the Southern Pacific; three times for the Missouri Pacific; twice for the Santa Fe; and for the Shreveport & Red River Valley (now the L. & A); for the Cotton Belt; The Texas & Pacific and Union Pacific and the practice on these lines as to switching industries and spotting cars is about the same as on the T. & N. O. (p. 5728).

CROSS EXAMINATION

The service at this plant is no different from the spotting service at other industries which we switch, either with our own engines or hire the industry to switch. I never saw an industry where we didn't have to set some of the cars out first to subsequently be respotted. This is not true with respect to this industry at the present time (p. 5729).

If we should undertake to perform the switching at this refinery, our engine would go out in the afternoon, as it does now, taking along traffic consigned to this plant, and if the set out tracks at the gate were not there, we would set the cars on a siding which was constructed for that purpose. If, because of some track disability we could not use the set out tracks at the front gate, we would set the cars out on an empty track within the plant, pull out the loads and start for town to make connection with the Shreveport traffic for

Dallas, which would have to move on those trains because of competitive reasons. Our engine would then return to the refinery where the cars had been set out and proceed to spot them.
723 This operation would materially increase our cost. If, upon returning to the industry we could not perform the spotting service we would have to leave the cars wherever the yardmaster at the refinery wanted them; there would be nothing else to do (p. 5730).

With respect to spotting within the industry our engine crew would be guided by a switch list furnished by the industry. In case there isn't room where the cars are to be unloaded, we put them on constructive placement, wherever we can. With reference to the cars that had been set out, the yardmaster's switch list would designate the cars to be spotted and the remaining cars would remain on the set out tracks. We find that situation to be the case in every industry.

If the carrier should switch this industry, for demurrage purposes, free time would begin to run from 7:00 A. M. after the time the cars had been placed at the loading or unloading point, except in the case of constructive placement where we could not place the cars because the tracks would be occupied by other cars.

In the industrial service, instead of free time beginning to run from the time the cars are spotted for loading or unloading, it begins to run from the time they are placed on the interchange track. As to why there is a difference, I do not know, except that they have asked us to place the cars on the interchange track (p. 5731).

724 THE TEXAS COMPANY (HOUSTON WORKS)

(Hearing held May 18, 1932, at Galveston, Texas.)

C. J. SMITH was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5737):

DIRECT EXAMINATION

The Houston Works of The Texas Company is the old Galena Signal Oil Company refinery. I have been employed by The Texas Company since 1926 and have been at the Houston Works a little over three years. I am familiar with the track lay out and the switching operations at the Houston Works.

The blue print showing the track lay out of the Houston Works shows the Texas and New Orleans Railroad tracks running east and west, terminating at a point about 30 feet west of the north and south bound main line of our own track. It also shows the Port Terminal railroad trackage on the north part of the map with which we make connection. The numbers shown in circles on the map represent the loading and unloading spots. The point of connec-

tion with the Texas and New Orleans Railroad Company is with the track running east and west previously mentioned.

We also have a connection with the Port Terminal Association at the north side of our property on the wye designated as P. T. R. R. The Port Terminal Association uses as an interchange the first two tracks coming from their wye and turning off to the left, setting out the empties on one and receiving the loads on the other. That is, the P. T. A. in reaching our interchange tracks operates over plant track No. 13 and plant track No. 5. From the interchange track, we spot the cars with our own power after they have been delivered at the points mentioned.

725 The traffic from the T. & N. O. is brought in direct and through the P. T. R. A. (p. 5739).

CROSS EXAMINATION

The T. & N. O. has its own line and is also a member of the Port Terminal Association. The T. & N. O. does not receive or deliver any traffic at this plant through the Port Terminal Association.

I know of no reason from a physical standpoint why the Port Terminal, if it so elected, could not perform the service.

The other designations shown on the map as 6, 7, and 8 are loading spots. That is what 5 really is. Distance between 5 and 6 is between 600 and 700 feet; between 5 and 7, 700 feet; between 5 and 8, from 900 to 1,000 feet; and between 5 and 9, about 1,300 feet.

At spot No. 6 we unload lumber. If a car of lumber was brought in by the Port Terminal, it would be placed on track 13 first. Track No. 5 is for outbound traffic.

We would move a car of lumber from track 13, with our engine, around to spot No. 6, which is a distance of about 1,000 feet, as compared to a distance of a mile by the Port Terminal, since the distance with the Port Terminal connection is about a mile over track No. 13.

Spot No. 7 is the unloading point for ice and merchandise, inbound. The cars for that location would be thrown in by the Port Terminal if it came in by that road, on track 13. If they came in via the T. & N. O., they would be delivered on the two interchange tracks used by the T. & N. O., opposite spots called 1 and 1–A. The distance between spot No. 7 and spots 1 and 1–A is about 3,000 feet beyond the wye.

726 At spots Nos. 8, 9, 10, 11, and 12, we unload merchandise into our store house. Our only loading points are at 1, 1–A, and 3. We unload on the T. & N. O. interchange tracks opposite points 1 and 1–A. We load gasoline at the point designated as 1; kerosene at the point designated as 1–A; and gasoline and fuel oil at the point designated as 3.

Outbound traffic is picked up by the plant engine at points 1 and 1–A, going out via the T. & N. O., is moved over to the T. & N. O.

interchange switching a distance of about 3,000 feet. If this same traffic went out via the Port Terminal, it would be placed either on track 13 or track 5, and the switching distance would be somewhat more extensive than when it moves out over the T. & N. O.

Inbound traffic, placed on tracks 13 and 5, and thence to the spotting locations for loading, is moved in one uninterrupted movement each morning. It is very seldom that we cannot spot right at once all our requirements.

The track just west of what is called the Channel Slip is the one we use for storing empty cars (p. 5744).

REDIRECT EXAMINATION

The movement of traffic from the loading points 1, 1–A, and 3 to the interchange with the P. T. R. A. or the T. & N. O. is 20 times as much as the movement of miscellaneous commodities inbound delivered at spots 5, 6, 7, 8, 9, and 10.

RE-CROSS EXAMINATION

Industry operates one locomotive and it does not require the constant use of one locomotive to meet the needs of the industry. This locomotive is in service a little more than a half day at the present time; in other words, this engine is idle part of the time.

727 REDIRECT EXAMINATION

During the idle time the two men constituting the engine's crew are engaged in other work. The idle time merely ties up the engine, but the men are kept busy.

A blue print of the industrial lay out was received in evidence and marked "Exhibit A–80, Witness Smith."

CHARLES ERVIN, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5752):

DIRECT EXAMINATION

I am Assistant Manager of the Traffic Division for The Texas Company. I have held that position for about four years. Prior to that time my position was similar except the title was different. I then had the title of Superintendent. I have been with The Texas Company for a little more than twenty-five years and my headquarters are in New York City.

The Texas Company first took over the Galena Signal Oil Company on December 1, 1928, and at that time the Galena Company had been performing the switching service within the plant. The Galena Company was receiving an allowance from the T. & N. O., which was the only line serving that plant at that time.

When The Texas Company took over the Galena Company, there was a great deal of reconstruction work, and it was not until July or August of 1929 that The Texas Company really started operating the plant as a refinery. During the period of reconstruction, about the only materials of traffic handled was in the nature of material inbound for the construction work. At that time, the T. & N. O. switched the traffic, that is, spotted the cars for unloading. At the time we took over the plant, we found track, and so far as
728 I know, the same track is there today (p. 5754).

After we acquired the property, we opened up negotiations with the T. & N. O. for an allowance, and to have that railroad amend its tariff so as to substitute The Texas Company in lieu of the Galena Signal Oil Company. The tariff was so amended. At that time Mr. Reed of the Southern Pacific informed me that it was felt that it would be well to make a cost study as to the cost of operating or performing the switching, and along about in July a cost study was made. This was not until we began operating the plant and shipping out gasoline and other commodities.

There was no cost study made at the time that tariff was changed to substitute The Texas Company for the Galena Signal Oil Company.

At the time we took over the refinery, the Port Terminal Railroad Association had no connection with the plant.

The Cullinan interests operated both the Galena Signal Oil Company and the American Petroleum Company, which was in the same general vicinity. The Cullinan interest started to construct a line known as the North Side Belt, and had a good part of the trackage laid before they realized that a certificate of convenience and necessity was necessary. Their application for such certificate was denied by the Interstate Commerce Commission. Later on the Port Terminal Railroad Association acquired the ownership of the North Side Belt and a certificate was granted on July 23, 1929, which gave them a connection with the The Texas Company plant.

Negotiations with the member lines of the Port Terminal Association were verbally entered into for the same allowance that
729 The Texas Company was then receiving from the T. & N. O.

The member lines of the Port Terminal Association also filed an application with the Railroad Commission of Texas for an allowance of 90 cents.

Special Authority dated August 7, 1931, from the Railroad Commission of Texas authorizing an allowance was received in evidence and marked "Exhibit A–83, Witness Ervin."

The tariffs of the Port Terminal Association, granting switching allowance of 90 cents by its member lines, were made effective on intra-state traffic on July 30, 1929; and on interstate traffic on September 4, 1929 (p. 5756).

A cost study was made which indicated that the cost of performing the switching service was somewhat in excess of 90 cents and

I so notified the Southern Pacific. As a matter of fact, the amount reported to me as being the cost of the service was $1.26.

The Southern Pacific notified me on April 22, 1930, through Mr. F. G. Reed, to this effect—he quotes a letter from their general manager which I would like to read into the record: "We have made an investigation into the switching service now being performed by The Texas Company at their plant at Houston, formerly owned and operated by the Galena Signal Oil Company, and find that there has not been any (fol. A–1655) material change in the method of operation since the plant was taken over by that company. We are convinced that no change had occurred in the handling of switching at this plant since switching cost test was conducted March 4th to 10th, 1925, inclusive, that would justify any change being made in the allowance of 90 cents per loaded car, as was agreed between these lines and the Galena Signal Oil Company as a result of this study.

It is, therefore, my thought and recommendation that the
730 present rate of 90 cents per loaded car, which is being made to The Texas Company for performance of service that is the obligation of the carrier, be continued. Please advise if it is agreeable to continue the present allowance?" After referring the matter of our Houston office who had to do with the making up of the cost study, the handling of the cost study, we agreed and I so notified the Southern Pacific that we would go along on the ninety cent basis (p. 5757).

T. H. MEEKS, Assistant to the General Manager of the T. & N. O. Railroad of Texas, was recalled and testified as follows (Vol. 6, p. 5774):

DIRECT EXAMINATION

I am the same Mr. Thomas H. Meeks who has heretofore testified in this case. I am familiar with the situation of The Texas Company's refinery, formerly the refinery of the Galena Signal Oil Company of Texas, near Houston.

As far as I know the Galena Signal Oil Company performed the switching at this plant, prior to the time when The Texas Company took it over, at which time it was shut down for a short period and our engines performed the switching during the period of reconstruction.

The Galena Company made application to the T. & N. O. for an allowance in 1923. A cost study was made and as a result of that study, we allowed them 65 cents per car. Later on, at the request of the industry, this allowance was raised to 90 cents per car. The return to the Commission's questionnaire is correct with respect to the cost study and the original allowance. The 90 cent allowance was discontinued at the time The Texas Company took over the plant and the T. & N. O. switched the plant during the period the plant was shut down for reconstruction.

731 There is nothing with respect to the physical condition of our track lay out that would prevent the locomotives of the T. & N. O. from switching our plant (p. 5776).

CROSS EXAMINATION

By using The Texas Company's transportation cost and their wages, we figure a cost to the T. & N. O., less depreciation, of 97 cents. That is less than what it would cost the T. & N. O. to do the switching. If we had to do the switching, it would be necessary to assign another engine between Clinton Dock and the Texas plant to pick up and deliver cars on the industry's interchange tracks. If we had to do the switching within the plant, we could not cover all of that work with one engine; in other words, we would have to assign another engine and crew in that territory which would probably only spend part of its time at The Texas Company plant and the rest of the time it would be engaged in other work in that general vicinity.

It would not take us very long to spot the cars at points designated on the map, Exhibit A–81, but that is only part of the work. It wouldn't cost 90 cents a car to spot them at points 1 and 1–A, but we allow 90 cents on everything that is done in the plant for the account of the railroad (p. 5779).

REDIRECT EXAMINATION

We use five men in our crew and The Texas Company, I believe, uses three. We pay a good deal higher wages than the industries. We also pay time and a half for all time in excess of eight hours, while the industries pay for straight time. For the year 1931, we paid The Texas Company $8,882.80 which is about one-third of the cost of a switch engine's time for that year. If we were to
732 switch the plant, we could not get away with one-third of the time of the switch engine for a year, since the engine would have to go from Hardy Street to the Englewood Yards, three miles, and pick up the traffic, and another eight miles from the Engelwood Yards to the plant, and in addition, to the cost of traveling eight miles, we would pay for having the plant switched.

There appear two payments to the Galena Company; one for 1927 of $3,237.30, and one for 1928 of $9,192.10, with a note "not vouchered account of dispute." This latter amount is explained by the fact that they had included the American Petroleum Company in the Galena bills and we held the whole bill up on account of there being some previous amounts erroneously charged.

The Port Terminal Railroad does not handle any of our business with The Texas Company. We do it all ourselves. There is no relationship between the Port Terminal Lines and The Texas Company (p. 5785).

W. B. DRAKE, Superintendent, Port Terminal Railroad Association, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5629):

DIRECT EXAMINATION

There are about twenty industries served by the Port Terminal Railroad Association for and on behalf of its members. About eight of these industries are oil companies, namely, The American Petroleum Company, The Texas Company, Humble Oil and Refining Company, South Side Terminal, Deep Water Oil & Refining Company, Sinclair, Crown Central, Phillips Petroleum Company, and the Shell Petroleum Company. The Texas Company is the only one of the eight receiving an allowance.

733 We do not go into the plants of the American Petroleum Company and The Texas Company, but we do go into all of the other plants mentioned.

The reason we don't go into the plant of the American Petroleum Company is because they prefer to operate their own engines, so they inform me for two or three reasons; one was the convenience for frequent intra-plant movements; another was to use the steam from the locomotive for operating pumps and also to load tank cars.

We do not go into the plant of The Texas Company because the industry does not desire us in there. All of the other industries permit us to enter their plants. The Texas Company prefers to do its own work (p. 5636).

Among the industries we serve there are none that refuse to permit us to enter their plants other than the American Petroleum Company and the Texas Company. I might modify that, I don't know that they actually refuse. The Texas Company prefers to do their own work. I would rather put it that way.

Some of the industries other than oil industries we serve require as much work as the oil industries do. The Manchester Terminal Corporation requires 24 hour service in the rush season. We have to have an engine there all the time and sometimes two of them. They can discharge the work of 175 cars at one time. Frequently they load out the same string of cars that they unload. We will make from ten to twelve separate and distinct movements in there each 24 hours during the heavy movement of cotton, at which time an engine may spend as much as two or three hours spotting and bringing out the empties after the load had been put in. The service must be rendered in accordance with the needs of the industry throughout the day; that is, as fast as a string of cars is emptied the engine must be there to relieve the tracks.

734 Another industry where we render substantially the same kind of service is at the Turning Basin Compress. All compresses require a frequent service, because it is a commodity unloaded very rapidly. In addition we have always had an engine assigned at the Sinclair Refinery which does nothing but serves that refinery. The work at that plant makes it necessary for the engine

to be on the go all the time and our engine foreman there operates under the instructions and directions of the Sinclair Refining Companies plant superintendent who issues all instructions governing the details of spotting. He and some of his clerks make out a switch list which goes to our engine foreman.

To a degree the operations at the Sinclair plant resemble those at the other oil refineries we serve; of course, at the other refineries they don't require the full time of an engine because of the difference in the volume of traffic. At the Shell plant we make a trip every night to pull and set their cars. There is no interruption, and the switch list is just left in a box for us there. There have been times when we were required to assign an engine for service exclusively at that plant. Service at Phillips is a daily matter. Their traffic is not heavy enough to require more than one trip a day and the same is true at the Crown plant. We work those at night; they prefer not to be disturbed during the daylight hours. We have always done all the spotting at these plants that has been requested and if three engines were necessary at the Sinclair plant we would put the engines in. The Sinclair Refining Company performs practically all of the intraplant work with its own engines, including the handling of coke (p. 5640).

735 The same kind of service is performed by the motive power of The Texas Company as is performed by the line-haul carrier at the Sinclair refinery, namely, the industry's yard master furnishes a switch list, or memorandum, showing where the cars are to be spotted, et cetera (p. 5638).

Q. You say The Texas Company prefers to do its own spotting. Do you know what that is based on?

A. Well, yes; it was considered advantageous to them to have an engine available at all hours of the day.

Q. Couldn't you put an engine out at their service the same as at the Sinclair?

A. No, sir; not with that volume of business; we would (fol. A-1488) not undertake to hold an engine there for a little intra-plant work. We would do all the intraplant work they wanted done at the time the engine was there, but we would not hold an engine there for the purpose of doing possibly intra-plant work that might come up during the day.

Q. You hold an engine at the Sinclair Plant?

736 A. Yes, sir; but he is never idle, he is busy all day long.

Q. If The Texas Company business was sufficient, you would do the same thing there?

A. Yes, sir.

Q. Are there any other reasons that have been assigned to you as to why The Texas Company prefers to do their own spotting?

A. No, sir; my information comes from the superintendent of their plant, that they prefer to do their own spotting because it is convenient for them to have an engine available at all times.

Cross examination by Mr. JAMES J. SHAW:

Q. When did the Port Terminal Association establish a connection with The Texas Company plant?

A. It was constructed, the whole thing, by Mr. Cullinan, and was in existence when we acquired the line.

Q. When did you acquire that line?

A. July 29, 1931.

Q. July 29, 1931?

A. Yes, sir. However, I believe the certificate of convenience was issued July 23rd and did not reach us until sometime later.

(Fol. A–1489.) Q. When you acquired the ownership of that line, you found The Texas Company performing the switching service within the plant, within its plant there, didn't you?

A. Yes, sir.

Q. Now, have you at any time offered to perform the switching service for The Texas Company or have they ever refused to
737 permit you to perform the switching service within their plant?

A. Knowing that we were going to take the Line over for operation, I called on the Superintendent of The Texas Company and asked him if it would be satisfactory for us to serve the plant, and he then informed me that they preferred to do the work themselves.

Q. You were aware of the fact that they were performing a switching service for Texas & New Orleans Railroad at that time?

A. Yes; I knew that.

Q. Are you personally familiar with the negotiations between The Texas Company and the members of the P. T. R. A. with respect to the allowance for the substituted service?

A. No, sir.

Q. But you did, at the time you took this railroad over, you did go to The Texas Company Superintendent and offer to perform the service within the plant?

A. Yes, sir.

Q. And what was his answer?

(Fol. A–1490.) A. That he preferred to continue the present arrangement and keep his own engine.

Q. Did he explain to you why he preferred to do that?

A. He said that it would be advantageous to them to have an engine available at all hours to do shifting in the plant.

Q. In other words, the matter of service?

A. Yes, sir; that was his reason (p. 5642).

I know of no reason that would prevent the Port Terminal Association from performing the same service at the plant of The
738 Texas Company that it performs at the plant of the Sinclair or any other oil company, except that the tracks at The Texas Company plant would have to be fixed up a little to accommodate our class of engines. In other words, there is a certain amount

of maintenance work necessary to make the tracks safe for our equipment. This could be done without a great deal of expense.

The allowance paid to The Texas Company is paid by the lines and not by the Terminal Association. A statement is furnished each line each day with reference to the number of cars received and delivered for the account of that particular line to both the American and The Texas Companies, and at the end of the month we make up a statement and they pay whatever allowance we have agreed to pay on account of the interchange service.

At the time the Port Terminal Association took over the operation of the North Side Belt, we found that the T. & N. O. and The Texas Company were handling the business and the T. & N. O. still handles its own business the same way (p. 5643).

The map showing the tracks of the Port Terminal Association was received in evidence and marked "Exhibit A–71, Witness Drake" (p. 5645).

REDIRECT EXAMINATION

I did not, by actual test, determine whether it would be more economical for the power of the Port Terminal to perform the switching than it is for the plant power to perform this work. I did, however, make an estimate and my opinion is that it will be cheaper to let the industry perform the switching because the volume of business is insufficient to justify the continued use of one of our locomotives within the plant. This is not the situation at the Sinclair refinery. I did not make any such recom-
739 mendation, however, to by Board of Control, because they understood as well as I did that The Texas Company preferred to do their own work (p. 5648).

W. B. Drake was recalled and testified as follows (Vol. 6, p. 5649):

CROSS EXAMINATION

At the time I was soliciting business from The Texas Company, I went over its tracks to see what shape they were in and how they were located with reference to their various loading and unloading tracks (p. 5650).

Q. Do you know whether any other hazards exist except those you mentioned?

A. No, sir.

Q. At any of the other plants, the Shell, did you encounter any operating hazards there that would require them to shut down the plant to permit you to do the switching?

A. No, sir; we have this to consider at all times at all of them, if a blue flag is up on the end where men are working, in order to switch that track we have to stop and notify the men to get out of the way and have one of their men remove the blue flag so we can work; that is an ordinary condition.

Q. That is true in your own yards?
(Fol. A–1502). A. Yes, sir.
Q. Have you ever had any accident of any kind peculiar to a refinery?
A. No, sir.
Q. But, in your opinion, with the precautions ordinarily observed by these operations in the plant, it is perfectly safe?
A. Well, I think the operation of a train or locomotive in any refinery is more hazardous than in a compress or some other industry where the likelihood of there being explosions is not present.
740 Q. That is just a point that is in your mind, but not in actual experience?
A. No, sir; it is a matter of constant watching on our part to see that the fire boxes are not leaking, that the burners are in good shape, and not to make any hard couplings to make sparks.

By Dir. BARTEL:

Q. The hazard in a refinery is ever present?
A. Yes, sir; and everybody should be keen to observe caution. We preach that to our men all the time, and the Sinclair people, for instance, have a safety committee; they have a man in charge of that work who is continually going around the premises, and he reports to their yardmaster if he sees these men indulging in any unsafe practices.
Q. The fact that these refineries handles dangerous (fol. A–1503) articles and there is a hazard attached is recognized by the Government having issued regulations?
A. Yes, sir.

By Mr. MADDOX:

Q. And this tends to remove the hazard?
A. No, sir; this tends to minimize the hazard, not to remove it.
Q. Have you ever had any such experience?
A. Not from our operations. There has been some fires to break out from spontaneous combustion (pp. 5650–5651).

741 W. B. DRAKE was recalled and testified as follows (Vol. 6, p. 5787):

DIRECT EXAMINATION

The member lines of the Port Terminal, with the exception of the T. & N. O., pay the switching allowance to The Texas Company direct. The T. & N. O. has its own connections other than through the Port Terminal.
I would not have any authority to deal with The Texas Company or its officers with respect to whether they wanted their switching done by the Port Terminal lines and, if I gave that answer previ-

ously, I misunderstood the question. It was my understanding that anything the superintendent said to me was sort of easing me off in a polite way. I did not have any authority to negotiate with the superintendent for performing the switching. I visited the Texas plant to increase the volume of our business and to find out how much switching we would have to do. At that time, the superintendent said he would prefer to continue to handle the switching as he had in the past (p. 5788).

742 P. H. Coon, Assistant General Freight Agent, New Orleans, Texas and Mexico Railroad, was recalled and testified as follows (Vol. 6, p. 5789).

DIRECT EXAMINATION

The Missouri Pacific Lines reach The Texas Company which is within the Houston switching limits through the Port Terminal Association. We have been advised by our operating people that the allowance we make to The Texas Company is reasonable, and it is more towards economy than if we were performing the service ourselves. It is a very satisfactory arrangement, the way it now operates.

The information that we could not enter upon The Texas Company's property, if we so elected, came through Mr. Drake who has previously testified, and my understanding of his testimony is that we were possibly misinformed as to that statement. When we made the answers to the Commission's questionnaire, we consulted and were advised by Mr. Drake (p. 5790).

L. A. David, Assistant General Manager, New Orleans, Texas and Mexico Railroad, was recalled and testified as follows (Vol. 6, p. 5791):

DIRECT EXAMINATION

Q. Mr. David, I understand that the response to the questionnaire made by the Missouri Pacific, in so far as it indicates that The Texas Company refused entry of your power for the purpose of performing the described service, was based upon information furnished by you, which you secured through Mr. Drake. Is that correct?

A. Partially correct.

The information was secured not only through Mr. Drake, but through our executive offices in handling the negotiations; they handled the negotiations for the Port Terminal, being a part of the Board of the Port Terminal Association. However, my understanding is that the information that they conveyed to me was given

743 to them by Mr. Drake as well as he gave it to me.

The information obtained from the executive offices was verbal. It all happened at a meeting. I don't know of any minutes being taken of the meeting. The meeting was started by calling in

Mr. Drake to form a committee to investigate the track conditions and lay out at the Texas plant. This was to determine whether we could or could not operate our engines within the plant. A decision was reached by the executive committee and passed on to me by the Assistant Vice-President that an allowance would be made. This was done without regard to whether they could or would not allow us entrance into the plant. The allowance was recommended by the committee who investigated the trackage, et cetera, in the face of the report made by Mr. Drake that the committee would not permit the carrier's power to enter the plant. The allowance was made to the oil company as an economical proposition (p. 5792). The allowance was made because of competition only after and because of economies effected as recommended. I presume, by the committee who made a study of the track lay out (p. 5793).

It is possible that the superintendent of The Texas Company misunderstood the question asked by Mr. Drake and his reply might have referred to intra-plant switching and not railroad switching. A recommendation as to whether we could or could not economically handle the traffic is one thing and the question of entrance into the plant would be a different consideration. In making a survey as to the switching changes contemplated, the operating men make a survey of the physical conditions, and we have, in several instances, made the report that we could not enter a plant, and if we were to enjoy any of the business, it would be necessary to employ the plant to do our work. We have made recommendations as to whether we could not switch the plant without consulting the plant
744 as to whether we would be permitted to do it or not. The question of whether the plant will permit us to perform the service therein is gone into after the recommendation has been made.

At Galena the Port Terminal actually does enter the Texas Company plant, and makes deliveries, running for a mile over the industry track in getting from the Katy to the industry (p. 5794).

J. H. TALLICHET, General Counsel for the T. & N. O., was recalled and testified as follows (Vol. 6, p. 5794):

DIRECT EXAMINATION

Mr. TALLICHET. It happens that I know a good deal about this transaction that has been testified about. To go back a little, the North Side Belt Railroad was built by Mr. Cullinan and his interests in the face of an injunction suit which alleged that he could not build or operate it without a certificate of public convenience or necessity. The court held that he could build it without a certificate of public convenience or necessity, and he did built it, but they further held that he could not operate without such certificate from the Interstate Commerce Commission and, after due hearing, the State Commission denied the certificate. The line remained unused for some time and was finally leased to the Harris County Naviga-

tion District—I omit all of the long name of that concern. They leased it, that lease having been acquired in behalf of the various lines; I filed an application to extend their operations over that track. It was the position of the Navigation District that they could acquire that control without authority from the Commission, that they could extend their lines without any such authority; they had extended their lines without it, but this came to a show down and the Commission took the position quite clearly that there would have to be an application to acquire the control. They did file the application and that brought about some delay in the
745 whole transaction. In the meantime, the East Texas Oil Field was developed and a good deal of the production was pouring into Houston; all that which went to the Galena and the American Petroleum Company had to be switched by the T. & N. O. The other lines that came into Houston regarded that with a feeling of extreme regret, and they were constantly ringing me up to know why the Interstate Commerce Commission did not act and when the Commission finally did act and grant both of those applications, they were after all concerned to know why they could not go ahead and begin operations immediately without waiting for the thirty days. It was during that time that these conversations with the Texas Company people took place. The other lines were pushing Mr. Drake with a sharp stick to be ready to operate in there just as quick as it could be lawfully done. A rather interesting thing occurred during that time. Among those who called me up to know why I did not say they could go ahead and operate without waiting thirty days was Mr. Waite, the director of the Navigation District, and there were long pauses during which I heard a representative of one of these lines who sat very close to him and poured into his ear the most impassioned argument about the Southern Pacific getting this switching. That, of course, came over the phone almost as clearly as (fol. A–1710) Mr. Waite's own oration. One of the things—they told us a good many things of what The Texas Company said and we were afraid they didn't understand clearly and we asked The Texas Company whether they said it, and I found there was some error in the transmission and that The Texas Company had not exactly said what these intermediaries thought they had, but they were wanting to pour this stuff in the back door of the refinery in a way that, at the moment, the superintendent and the
746 operators were not in a position to receive it without waiting for the thirty days. Finally, I think they did begin a little bit before the thirty days had elapsed. That is the whole story. I know Drake's authority from the beginning. He is an operating man and could not deal with these things that they thought he could.

By Dir. BARTEL:

Q. Before the Port Terminal Association applied to the Commission for authority, is it not a fact that they refused access to any of their records by a representative of the Commission?

A. I would not exactly put it that way. I know that the Navigation District in control of the thing said they would not get up any records at their expense for valuation, but that the railroad companies which had this operating contract would have to put that up out of their own pocket. It is possible that the Navigation District did refuse to give (fol. A–1711) the Commission access to their records. They were of the opinion that they were the municipal property.

Q. As a result of that refusal, the matter was taken up——

A. As a result of the advice that they had better not stand too strong upon the advice that had previously been given.

Mr. Ross. Don't confuse the Harris County-Houston Navigation District with the Port Terminal Association. They are entirely distinct except that the Navigation District has a representative on the Board of the Port Terminal Railroad Association. Please do not get the idea that the Port Terminal Railroad Association, acting as a unit, has refused the Interstate Commerce Commission access to its records. I am pretty sure that you will find that the hard heads were representatives of the Navigation District, and that their
747 heads are now in a more malleable state (p. 5797).

Prior to the acquisition of the Houston-North Shore, our road did switch the plant, and I am quite sure they would be willing for us to do it again, and I am quite sure we would be willing to do it again. If the question as to whether we would be permitted in the plant or not should come up again, I would not take the matter up with the superintendent of the plant (p. 5798).

J. S. Hershey, General Freight Agent, Gulf, Colorado and Santa Fe, was recalled and testified as follows (Vol. 6, p. 5798):

It was my department that authorized the payment of an allowance to The Texas Company. In authorizing the allowance, we did not take into consideration the question of whether The Texas Company would permit the power of the Port Terminal to enter the plant and perform the spotting service. That question was not presented.

When the tariff authorizing the allowance from the Santa Fe was published, we knew that a similar arrangement had been in effect between The Texas Company and the T. & N. O. for quite a long time. We also knew that an arrangement of some kind had been made with the Missouri Pacific Lines via the Port Terminal.

It was not merely a matter of meeting competition but more of bringing about uniformity in the handling of the traffic. It would be impossible for The Texas Company to expect to handle the traffic any cheaper with one railroad than with the other. It was my desire to handle the matter in the same manner by the different roads; in other words, from a practical standpoint, we could not have K. C. S. cars and Burlington cars spotted by the K. C. S. switch engine (p. 5799).

748 D. C. JAMES was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5800):

DIRECT EXAMINATION

I am personal representative of the president of the Burlington-Rock Island Railroad.

The circumstances under which our company authorized the allowance to The Texas Company were, first, Mr. Drake reported to us that The Texas Company preferred not to have the switching done by the Port Terminal Railroad Association; then, upon that consideration, and the fact that The Texas Company was switching the T. & N. O., it looked like it would be an interference to the plant and not a practical proposition for the plant to handle the business of one carrier in one manner, and the Port Terminal Association in another. Then Mr. Drake reported to us that in his opinion, based on the present volume of business, that it would be cheaper for The Texas Company to do their switching than it would be for the Port Terminal Railroad Association to do the switching. Upon those considerations, we made application for tariff permission to make the allowance (p. 5800).

J. M. FLEMING, was recalled and testified as follows (Vol. 6, p. 5801):

DIRECT EXAMINATION

The bulk of the traffic at this plant is loaded at points designated on Exhibit A–80 as 1 and 1–A. The next largest loading position is at point designated as No. 3 on the map, down by the Ship Channel at the lower end.

The superintendent of the plant is not authorized to determine whether or not a railroad would be permitted in the plant to
749 perform the switching. Such a request would be referred by the superintendent to his superiors with his recommendations, and after it had passed through a certain amount of handling, our decision would then be given direct to the railroads (p. 5801).

750 THE TEXAS COMPANY (PORT ARTHUR AND PORT NECHES, TEXAS)

(Hearing held May 18 and 19, 1932, at Galveston, Texas.)

C. E. NICHOLSON, called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5733):

DIRECT EXAMINATION

I have been connected with the Texas Company for about 20 years. My headquarters at present are at Port Neches, Texas, where I have been located for 12 years and am chief clerk of that refinery.

Port Neches is on the Neches River about halfway between Beaumont and Port Arthur and is served by the Texarkana and Fort Smith Railway Company.

A blue print of the plant layout was received in evidence and marked "Exhibit A-79, Witness Nicholson."

This print shows the industrial trackage of the Texas Company and its refineries at Port Neches, together with two tracks owned by the T. & S. F. Railway Company. Numbers are inserted to show loading and unloading locations on the industrial tracks of the Texas Company and shows the number of frogs that appear in the tracks in the plant (p. 5734).

Inbound trackage is delivered into the plant at the line marked "K. C. S."—the center line of the three outside tracks up to a certain point where it cuts over and moves onto the track called delivery track. The engine, after cutting loose from the cars, moves farther down the delivery track, picks up the outbound loads and drags them back onto the K. C. S. main line of the three outside tracks and carries them out (p. 5734).

CROSS EXAMINATION

The connecting carrier has not during my time at Port Neches spotted loads or moved them from the plant. I have heard that they had at one time but I know nothing about that service.

751 There are 64 spotting places for loading and unloading in the plant. There is nothing about the physical condition of the track at Port Neches, as to weight of rail or other transportation considerations, that would prevent the carriers' power from performing the service our power performs. They could do it the same as we do it. There is nothing about the industrial operation, such as shifting cars in intraplant service that would interfere with the spotting service by the Texarkana and Fort Smith. The operations of the carrier in the plant could be so anticipated that we ought to avoid conflict in there, that is, avoid stopping the engine and avoid blocking their work.

When we find the needs of the industry we pull the cars from the point where the T. & S. F. has set them to the point of loading or unloading as needed by the industry. As to outbound movement we likewise put the cars out on the T. & S. F. when the industry is ready to have them pulled and if at the time the industry wants more cars we get the empties and shove them in (p. 5736).

752 H. M. SNYDER was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5745):

DIRECT EXAMINATION

I have been connected with The Texas Company at Port Arthur about twelve years. This company has two plants at Port Arthur, one of which is called the Port Arthur Works and the other is called

the Port Arthur Terminals. I am familiar with the physical lay out of the plants with respect to the traffic and switching operations.

A blueprint of the plant lay out was received in evidence and marked "Exhibit A–81, Witness Snyder."

This map includes the Texarkana and Fort Smith approaches and the plant locations of the various trackage in the plant and a general idea of spotting locations. This plant is served by the Texarkana & Fort Smith Railroad and that road interchanges traffic with the plant on tracks 31 and 32 as shown on the exhibit. The circles on the blueprint are the approximate spotting locations for loading and unloading materials, and The Texas Company with its own power moves the cars from the interchange tracks 31 and 32 to the points of loading and unloading within the plant. This plant is served only by the one railroad (p. 5747).

CROSS EXAMINATION

The spotting service at this plant has always been performed by the plant so far as I can recall.

When we go to the interchange tracks for the cars, they are all pulled in one drag and spotted at the places for loading and unloading. We move the cars from the interchange tracks when the
753 industry requires them, not necessarily at specified times. We place them when it is convenient for them to handle the cars, but generally it is all more or less one operation.

The red lines on the exhibit indicate that some of the rail is 80 pound rail and the yellow lines indicate that the rail is 60 pound rail. I think it would be possible for the Kansas City Southern to operate over those tracks.

REDIRECT EXAMINATION

The question as to whether the Kansas City Southern ever performed the service within this plant is only of my own personal knowledge and that dates back to about 1925 or 1926.

This is a blueprint of our Port Arthur Works, showing the track lay out, including the tracks of the Texarkana & Fort Smith and T. & N. O. railroads entering the plant, and an approximate idea of the various loading and unloading points.

Traffic with the T. & N. O. is interchanged with the plant, at what might be termed, as a matter of convenience, the south side of the plant. It will be noted that the T. & N. O. tracks are shown just outside of the numbers 57 and 62 and coming on down into our plant at a point about No. 48. In other words, the two tracks shown are the tracks upon which the T. & N. O. delivers cars to the plant and the plant delivers cars to the T. & N. O.

Traffic is interchanged between the T. & F. S. and the industry, on what might, for convenience, be termed the northern side of the plant. The tracks of the T. & F. S. enter our plant and terminate

at points marked 7 and 15 on the exhibit. The plant power takes the cars from the interchange tracks of the two carriers and spots them throughout the plant at points of unloading and loading.
754 Likewise, the plant power moves the loaded cars from points within the plant and delivers them to the two carriers on their respective interchange tracks (p. 5750).

RE-CROSS EXAMINATION

The commodities handled at this plant are the same as handled at other oil refineries. While the blueprint gives a general idea of the various loading and unloading points, a great majority of the material received could be confined to about ten of those points.

The points where most of the traffic goes are: for instance, quite a number of cars go in on tracks Nos. 8 to 12 where we load steel. That is also the entrance to the car shops. Quite a number of cars go into the locations designated as 27 to 35. A large majority would go on to the tracks designated as 43 and 45. Tracks 27 to 35 are principally loading tracks; however, 35 is both loading and unloading to a certain extent. Tracks Nos. 76, 77, and 78, on the left hand end of the map, will also take quite a volume of material; that is, with reference to both railroads.

Generally speaking, when the cars are moved from the transfer track, the process of delivery is continual until their final distribution. The cars are moved from the transfer track on a schedule worked out to the mutual interest of the switching crew and the industry (p. 5751).

REDIRECT EXAMINATION

Generally speaking, we move the cars from the interchange tracks promptly, but the length of time they would be left on the interchange track after delivery by the railroad would depend entirely upon the volume of business and the nature of the work (p. 5752).

755 CHARLES ERVIN, Assistant Traffic Manager of The Texas Company, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5752):

With respect to the 90 cent per car allowance made by the Texarkana & Fort Smith Railway and the Texas and New Orleans Railroad at Port Arthur, and the $1.00 allowance made by the Texarkana & Fort Smith Railway at Port Neches—there seems to have been some switching negotiations, verbal, between Mr. Jervis and Mr. J. F. Holden, who was then vice-president of the K. C. S., in connection with the granting of an allowance to The Texas Company at its plant at the Port Arthur Works, the Port Arthur Terminal, and the Port Neches Works.

A copy of Mr. Holden's letter would indicate that the question of an allowance had previously been discussed verbally with Mr. Jervis.

A copy of a letter from Mr. Holden to Mr. William Jervis, Traffic Manager of The Texas Company, was received in evidence and marked "Exhibit A–84, Witness Ervin" (p. 5759).

Mr. Holden's letter to Mr. Jervis was referred to our Mr. Duggan, formerly located at Houston as Assistant Traffic Manager of the Railway Traffic Division, with instructions that he conduct the cost study in connection with the allowance made at Port Arthur.

Our file indicates that a cost study was made and that an allowance was published in the tariff either on March 31, 1924, or May 24, 1924, as the effective date. Our file also shows that a joint check was made by the K. C. S. and the T. & F. S. and The Texas Company (p. 5761).

J. M. FLEMING, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5763):

DIRECT EXAMINATION

I have been with The Texas Company for the past fifteen years. For the first fourteen years, I was connected with the railroad traffic department. I was more or less their superintendent of transportation in the Southwestern District. I had general supervision of operations with respect to tank cars and the operating and transportation problems we had in delivering our freight or receiving it. I had thirteen years railroad experience before coming with The Texas Company.

When a joint check was made by the T. & S. F., the T. & N. O., and The Texas Company, instituted in 1923, I was assigned to represent the refinery.

As to the method used to determine the cost of performing the service—I might say, in the beginning, we made more or less of a preliminary study of our own, which did not mean anything because we were not familiar with the railroad procedure of figuring switching costs. Subsequently, we made a cost study with the T. & F. S., which was more or less wrong because they did not know what was to be included. Finally, in 1923, a cost study was made by each railroad and the industry. Following that cost study, we had a conference with the K. C. S. cost accountant and determined what proration should be made of the time and what cost would be used in arriving at the cost per loaded car for railroad switching. To the best of my recollection, the cost of performing the switching was in excess of $1.00 at all three points, namely, Port Arthur Works, Port Arthur Terminals, and Port Neches (p. 5764).

I also had charge of a joint cost study that was made with the T. & N. O. and our plant at Houston, Texas. That study was made in January 1930, and showed the cost of switching at that plant to be $1.26 per car.

We also made a cost study in the early part of this month (May) at our Port Arthur Works, Port Neches Refinery, and at our Hous-

ton plant. That study covered a period of about 6 days and the railroads were not invited to participate. We merely wanted to ascertain what our cost was. We used the same identical formula as was used by the railroad at Port Arthur in 1923 and at Houston in 1930.

I have before me a statement entitled "Cost of switching carload freight between loading and unloading tracks of The Texas Company and track connections with the T. & S. F. at Port Arthur Terminals." This statement represents the result of the recent test which applies strictly to the terminal plant.

This statement shows that our engine was valued at $12,000 and was purchased in 1910. According to the formula we are supposed to use in arriving at these costs, this engine, though twenty-two years old, would receive consideration since we are supposed to use the original cost. The engine at Port Arthur Terminal is in splendid condition (p. 5766).

I have before me a statement (Exhibit A–85) which is the result of a test made at our Port Arthur Works from May 2 to May 7, 1932, inclusive.

I have before me a statement (Exhibit A–86) which represents the result of the check at the Port Arthur Works for the same period.

I have before me a statement (Exhibit A–87) which shows the result of the check that we conducted at our Houston plant during the same period.

Exhibit A–84 shows the cost per loaded car for switching to and
758 from the T. & F. S. at the Port Arthur Terminal to be $1.01 plus; Exhibit A–85 shows the average cost per loaded car for switching at the Port Arthur Works to be 94 cents plus; the average cost per loaded car for switching to and from the T. & S. F. at the Port Neches Works is $1.10 plus; and the average cost per loaded car at the Houston Works, as shown on Exhibit A–87, is 94 cents plus.

Statements were received in evidence and marked "Exhibit A–85 to Exhibit A–87, Witness Fleming."

At Port Arthur Terminal we only use a two, three, or four man crew, depending on the volume of business; at the Port Arthur Works, we use a standard five man crew; at the Port Neches Works, we use a two, three, or four man crew depending on the amount of business; at the Houston Works, we use a two man crew. Our pay for hostler, engineer, and switchman is somewhat lower than that paid by the railroads, becauses we do not use men that are members of what the railroads call the Brotherhoods (p. 5768). The maximum curvature of our plant tracks is 20 degrees. I think the Southern Pacific could operate our tracks efficiently.

CROSS EXAMINATION

It is my understanding that my company made no application to the railroads for an allowance.

At our Port Neches plant we never did perform all of the spotting service until we received an allowance. Prior to receiving an allowance the railroads performed part of the spotting service for about ten years.

At our Port Terminal plant, the railroads performed the spotting prior to granting an allowance, and we acted in a sort of supplemental way in certain instances but never completely performed the spotting service. For instance, if the railroad happened to leave a car at the wrong location, we would move it over to the right one. The T. & F. S. performed the entire service of switching for about five or six years.

759 Q. So far as we know from anything that has gone into this record, that service was satisfactory, at least, there has been no testimony to the contrary. Suddenly, along in 1923 or 1924, was it, a change was made, or that the service by the Kansas City Southern was substituted by the service of your industrial engine with an allowance. The question is, why the change?

A. Because we contracted with the railroad by accepting their allowance to do their work.

Q. That was on the offer of the railroad?

A. On the offer of the railroad, as I understand it.

Q. You did not apply for any change, and, as far as you were concerned, there was no reason for a change, as I understand it. You would like to have us understand that to be your testimony?

A. That the railroad service was satisfactory?

Q. Yes; that so far as your industry was concerned, that you did not in 1923 or 1924 seek a change in the method of serving your plant or an allowance.

A. We did not ask for an allowance. We may have asked for service, but not for an allowance.

Q. And the railroad offered an allowance in lieu of the service?

A. Yes, sir.

Q. And you accepted that?

A. Yes, sir.

Q. If the railroad today would offer the service in lieu of the allowance, I presume you would accept that?

A. I see no reason why they could do the work as satisfactorily as we are doing it (p. 5773).

760 I see no reason and know of no physical conditions that would prevent the railroads from switching these plants if they should so elect to do. We would, however, expect the same service that we ourselves are getting with our engines. We can work out a schedule satisfactory to the railroads and to us.

As to why we did not ask for the actual cost of performing the spotting instead of what the railroads pay us—in the beginning we applied for it and didn't get it and the railroads made us an offer, which we accepted.

The engines we use at the Port Arthur Works were new engines when purchased and built for our special use. The engines purchased for the other plants were second-hand engines (p. 5774).

T. H. MEEKS, recalled as a witness, having been previously sworn, testified as follows (pp. 5774–5777):

The Texas Company's refinery near Houston was formerly owned by the Galena Signal Oil Company. That company did the switching of cars in its plant except for a time when the Texas Company took it over.

There is nothing whatever in the physical conditions of the plant that would prevent the use of the tracks by our (T. & N. O.) locomotives (p. 5776).

761 HUMBLE OIL & REFINING COMPANY

(Hearing held May 19, 1932, at Galveston, Texas.)

W. S. SHIRLEY, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5882):

I am yardmaster of the Humble Oil & Refining Company at Baytown, Texas. I have held that position for twelve years.

A map of the lay out of the yard at Baytown was received in evidence and marked "Exhibit A–92, Witness Shirley."

Our tracks are indicated by numbers on the exhibit and the loading and unloading points are shown by circled numbers. For instance, circled 1 is the lube oil loading rack on track No. 2. Circled 2 is the gasoline and kerosene loading rack. There are 42 loading and unloading spots within the plant.

Our plant is served by the Missouri Pacific and the Southern Pacific. The plant tracks connect with the Southern Pacific tracks near our front gate. These tracks extend beyond the refinery gates and are wholly owned by the Southern Pacific.

We have two connections with the Missouri Pacific; one at Station 32, and a track paralleling the plant on the left side of the blueprint.

We move the merchandise car from station 32 and set it out at a point opposite "East Avenue" as designated on the blueprint, and go out on the S. P. interchange and pick up their merchandise car and shove them both into the house and then get our train from the Mo. Pac. In other words, we make a trip to the Missouri Pacific
762 interchange, bring the train in, break it up, and spot the cars at the different places in our plant. The same operation is carried out with respect to the Southern Pacific.

Those two cars cannot be brought in from the interchange tracks of the carriers and brought to the points shown. I have to do my switching first and take them in order, because some go in one direction and some in another. This is substantially the same service the railroads would have to perform if they were switching the plant.

We own two locomotives—one 65 ton Baldwin, and one 50 ton Baldwin, six wheel. We have used a Southern Pacific, 70 ton, locomotive in our yard. There is no physical disability in our plant, such as curves on the tracks, etc., that would prevent either of the railroads from switching the plant if they so elected (p. 5886).

The carriers have been in our yard several times but have never actually performed the spotting service at this plant.

We get a switch list from the Missouri Pacific the first thing in the morning notifying us that the cars are out on the interchange track.

(Fol. A–1843.) Q. Suppose a car came in there billed to the Humble Oil & Refining Company Warehouse No. 5. Do you see anything difficult about the carriers performing that placement?

A. Yes.

Q. Did you say yes?

A. Yes.

Q. Suppose the car reached Baytown consigned to our warehouse, there would not be any reason why they could not place it at our warehouse, would there?

A. No, sir; they could place it there.

Q. It is merely a matter of consignment?

763 A. Yes, sir; in fact, they can go any place in there.

Mr. DAVIS. That is all.

Dir. BARTEL. Have you any questions, Mr. Hagarty?

Mr. HAGARTY. Yes, sir (p. 5888).

CROSS EXAMINATION

The merchandise car I spoke of containing less-than-carload freight was worked up at the Missouri Pacific Freight Depot at Houston, and a like car made up by the Southern Pacific at their freight station at Houston or some other point. Because it is merchandise, a special handling by the Missouri Pacific to our designated track is necessary. All other inbound traffic is placed on the tracks before being put into the plant.

Our inbound commodities consist of crude oil, gasoline, sulphur, coal, pipe, and steel. Our outbound commodities consist of package cars, gasoline, kerosene, fuel oil, furnace oil, and junk. The package cars referred to are lubricating oils put up in cases, cans, and barrels and shipped in box cars.

I know of no physical disability that would prevent the carriers from having uninterrupted access to the plant for the purpose of spotting cars.

By Mr. HAGARTY:

Q. In taking the cars off of the interchange track of the connecting carrier and bringing them into the yard of the industry and classifying them in accordance with the (fol. A–1846) locations to which they are to be switched for either loading or unloading, do you make

the movement to the final spot on instructions from the industrial plant, according to where the plant wants the car spotted to load or unload, or do you do it in accordance with some standing
764 schedule that you have?

A. Well, in some cases we do and in some cases we don't. You take our compound building, for instance; they ask for a car, they may ask for a specific sized car, they may want one that is 9 feet 2 inches wide or 36 feet long or eight feet six inches wide; I have got to find that car.

Q. You have to find that car and pick it up wherever you can find it?

A. Yes, sir.

Q. And when they want that car, they want it right now?

A. Yes, sir.

Q. And you have to go and get it and spot it?

A. Yes, sir.

Q. In reference to some of the inbound cars, for example, the industry would not be ready to unload a certain commodity taken from a connecting line?

A. Yes, sir.

Q. Do you wait for an order from them to spot that car for unloading and when they give you that order, you go get that car and spot it for unloading?

A. Yes, sir.

Q. Is that true generally for all the cars you spot?

A. No, sir; that is the exception.

Q. Generally, you know where to spot the traffic?

A. Yes, sir; generally, if we get a crude car, we know that goes to the crude rack.

Q. And that is placed on standing order?

A. No, sir; there is an exception there. A certain kind of crude oil, maybe they don't want to unload that and I have to hold that out.

Q. You have to hold that out until you get orders to place that crude oil for unloading?

765 A. Yes, sir.

Q. Is that a frequent occurrence?

A. No, sir.

Q. It occurs rarely?

A. Yes, sir (p. 5891).

With respect to the outbound traffic, we pick it up from scattered points within the industry with respect to the particular line haul carrier, classified in our yard, and deliver it to the carrier on the connecting tracks.

The reason we don't get all our deliveries from the Missouri Pacific the same as we do our merchandise cars is because we haven't the room.

Q. Couldn't the Missouri Pacific push it down there and push it in on your tracks?

A. They could do it, I guess.

Q. Do you know why it is not done?

A. No, sir.

Q. It would be a whole lot shorter for you to handle it, wouldn't it?

A. In some cases.

Q. It would already be in your yard and save you the haul from the Missouri Pacific yards?

A. Yes; but it would block me in another way.

Q. In what way?

A. It would block me going to the docks.

Q. Well, if the Missouri Pacific were to switch your plant, do I understand then that you would require that, in spotting your plant, you would insist upon the Missouri Pacific bringing it through your present interchange to the various spots within your plant?

766 A. That would be up to them; they are switching it.

Q. I understood you to say they could not bring it in any other way because it would block the plant?

A. Yes, sir; so long as I am doing the switching, if I were doing the switching.

Mr. DAVIS. So long as you are——

Dir. BARTEL. Let him do the testifying.

A. If I am doing the switching and they come in here, I could not go to the docks at all (p. 5893).

If the Missouri Pacific should bring the cars into the plant instead of delivering the cars on the interchange track, they would have to do it by going through our plant operations to reach our break-up yard. The carrier would have to traverse the same tracks through our plant that the industry uses in reaching our break-up yard. If the carrier performed the switching, it would have to bring the train to our break-up yards and await further instructions from the industry before spotting the cars. That is, it would necessitate moving the cars from the break-up yards under our instructions to various places in our plant. If the Missouri Pacific should undertake to perform that service, it would interfere with our getting to the docks, because the head end of our yard comes out on our main line. He would have to get in the clear and let me by; that is all.

If the Missouri Pacific handled the movement around the other way, that would not interfere with our going to the docks.

I know of no reason why the Missouri Pacific could not furnish their own yards the same as the Southern Pacific does at Goose Creek, make up their trains in their own yards, and then spot our plant direct (p. 5895).

Our plant is twenty-nine miles from Houston. It is not within the Houston switching district. Traffic by the Missouri Pacific is delivered to our plant by local trains from Houston.

If the T. & N. O. should undertake to spot the cars
767 at our plant, it would interfere with our freedom in going to and from the docks unless they complied with the schedule we now have.

The connecting carriers could not perform the necessary spotting in our plant unless they conformed to the service that our own power performs. If the carriers undertook to switch our plant, and we were working an engine of our own, they would interfere with our engine unless the switching was performed under some arranged schedule. If the carriers were performing the switching in the plant, we would have to have an agreement that they would let us pass; it would increase the cost on the part of the industry and also the carriers because of the delay (p. 5897).

As to whether there are sufficient facilities now existing at the Missouri Pacific point of interchange, Block 32, referred to on Exhibit A–92, where we receive merchandise traffic—that interchange only holds five cars. With the proposed move necessary in shifting the cars, the Missouri Pacific would have to use our track to the end of our yard and East Avenue, and operate over the Southern Pacific to get his clearance, to get back into our yard. In other words, to make delivery of traffic via the point marked 32 on the exhibit, we would be required either to increase our facilities at point 32, or the carrier would have to utilize the Southern Pacific track (p. 5898).

We go out to point 32 and bring in the merchandise cars first, because if we waited until we brought in the train of cars from the interchange tracks and classified them in our yard, it would make the merchandise cars two or three hours late. The same would be true if the Missouri Pacific performed this same service. There is no reason why they could not bring the merchandise car down in one trick, other than the slight delay, they could handle it the same as other traffic. It costs the Missouri Pacific as much to kick out one car as ten.

768 One reason why we would not desire the Missouri Pacific to operate in our plant is because that carrier operates an electric line to Baytown and we would not desire an electric locomotive in our plant because of fire hazard. There is no reason why they could not operate a steam engine to the plant (p. 5900).

J. R. DAVIS, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 5900):

DIRECT EXAMINATION

Mr. DAVIS. I expect the Baytown refinery of the Humble Company is probably the newest of the coastal plants at which a private switch engine is operated. The plant was originally started sometime in 1919; for three or four years after the beginning, it was almost en-

tirely a construction project. The tracks were laid out, were laid in soft ground, no ballast; the switching at the plant was almost entirely—when I say almost entirely, I mean there was a large part of it intraplant service. This was performed by two small saddleback locomotives. As the plant grew, shell was moved from our docks, down to the Ship Channel, and roads were built and the track ballasted, light rail was relaid with heavier rail and the plant began to operate for outbound shipments as well as inbound (fol. A–1861) material. We wore out these light saddleback locomotives and the work got heavier, and about 1922 we purchased a Baldwin switching type locomotive of approximately fifty tons, because the yards at that time were in such shape that they could handle heavier equipment. The plant at that time was served by what was known as the Dayton-Goose Creek Railroad, almost the exclusive property of Mr. R. S. Sterling, who was at that time President of the Humble
769 Oil & Refining Company. This road was sold to the Southern Pacific, I think, sometime in 1926, I am not sure.

Mr. TALLICHET. May 1, 1926, effective.

Mr. DAVIS. May 1, 1926. Just about this time or shortly prior thereto the switching allowance had become in general vogue and was made to all plants and we awoke to the fact that we were performing a service for the carriers which they could easily perform for us, or for which we should be compensated. At that time the Houston-North Shore Railroad was under construction; it hadn't been completed. It was later sold by its builder to the Missouri Pacific Railroad, but after the switching test of which I will speak later had been made. Sometime during the early part of 1927, we handled with the Southern Pacific, both verbally and by correspondence, the matter of a switching allowance similar to that paid to other industries. I do not recall here whether we asked the carrier to perform that service for us; it does not show in the files, but cer (fol. A–1862) tainly they had that opportunity because at no time have we been averse to the carriers switching the plant and we have no reason now that I can think of why we should object to the carriers performing for us the service that we are now performing (p. 5902).

Dir. BARTEL. Have you ever denied the Missouri Pacific access to the plant for the purpose of doing that spotting?

Mr. DAVIS. Not that I know of.

Mr. JONES. You would not permit the electric power in there?

Mr. DAVIS. No, sir; that would be impossible because many of our racks have pipes from the ground with an overhead spout
770 through which the oil is loaded into the dome of the tank car and naturally there would be an interference with the overhead trolley wires; we have cranes with electric booms moving over those tracks, sometimes; we could not afford to take the wires down each time we wanted to use them, but there is no reason why any railroad using normal power, any steam railroad, can not come in

to the plant and operate it, and, so long as it does not increase our switching costs, we have no objection to the carrier performing the service. Our natural desire is to operate the plant as economically as possible, whether we operate it or they are doing the service.

Dir. BARTEL. How do you know it would increase the cost?

A. We have our own switching crew.

Dir. BARTEL. You say if it increased your cost, you would not want them in there. How do you know that there would (fol. A–1863) not be any interference if your power was operating around the plant?

A. There is more than one switch engine operating in this city, Mr. Director; there would have to be some arrangement made that one locomotive was clear of the track before another one got on it; it would be a matter of coordination between the two. Possibly we could change the operation of our plant to conform to the carriers; we did it at seven other different plants, all of which are switched by the carriers. We have found in all points where we operate, and from several hundred side tracks, that the carriers are just as anxious to offer us sufficient service to get the maximum tonnage as we are to get the maximum tonnage out and, as to service, we would be perfectly satisfied with the same good service we get at other places. We have crude oil loading racks loading 600 to 800 cars a day and requiring 6 to 8 switches a day. There is nothing
771 that forces the carriers to give us that service except their desire for additional tonnage. That same operation would be all right at Baytown. As we view the plant at Baytown, it is exactly the same as any small town which probably has five thousand operations and forty-two industries, all of them owning a private side track. We see no reason why the carrier should not perform a switching service into the Humble Oil & Refining Company warehouse at Baytown; they get into our warehouse at Houston, where we have one also, and where they do perform service. Certainly, if we organized the (fol. A–1864) Humble Compound Company, which dealt only in barrelled oil and operated its own side track, the carrier could not have any reason for failing to switch that industry's single track. The difference is that they would have to buy that yard instead of using ours, but they would certainly have to have some sort of yards to bring in their trains, break them up and serve forty-two different industries (p. 5903).

Now I will go on with the rest of it. The Southern Pacific preferring to pay us a switching allowance similar to that paid the other oil companies than to switch the plant themselves, agreed with us that a running board test would be made at Baytown covering a period of ten days. This was done. The test ran from November 11 to November 21, 1926, during which period of time there was received from the Southern Pacific 687 cars, received empties from the Southern Pacific—those were part tank cars—47 cars delivered, loads to the Southern Pacific, 86 cars delivered empties to the South-

ern Pacific, and 593 cars, a total of 1,413 cars. A large number of those were probably crude oil during the rush. During that test we had at that time only one switching locomotive. The engine worked
772 127 hours and 35 minutes, of which 77 hours and 3 minutes was railroad time, time spent in performing the placement of loaded and empty cars on which line haul revenue had been made by the carriers. We submitted to the Southern Pacific a statement of our engine costs. This was returned to us because it did not conform to the Commission's statement of accounts, and was remade including only those items which the carrier said they were allowed properly to charge into switch engine service. As a result of that, according to a letter here from Mr. Waid, of the Southern Pacific to Mr. Reed, the switching cost average was 95 cents per car, including both the loaded and empty movements. Naturally, had a smaller volume of cars been handled, the cost per car would have been correspondingly greater. Handling 1,413 cars in ten days would give an average of 141 cars a day, both loaded and empty, but the test shows that there were 773 loads durthat period, equivalent to about 40,000 cars per year or 20 to 30 per cent better than the average yearly traffic in and out of Baytown. Certainly at no time since then have we gotten our switching costs as low as they were during this test period. Since that time we have kept a record of our switching cost, based on the Commission's accounting system, as I understand it, and the separation of plant or rather, of intraplant and railroad service. Quoting from our figures for the last six months of 1931, our actual switch engine spots at Baytown was 21,917.14 (p. 5904).

A statement showing the cost of performing the switching was received in evidence and marked "Exhibit A-93, Witness Davis."

A statement showing the amount of traffic in and out of Baytown was received in evidence and marked "Exhibit A-94, Witness Davis."

773 CROSS EXAMINATION

We have never tried to get an allowance prior to this time. The question of an allowance was brought to our attention from the fact that everybody else had gotten an allowance and the fact that Section 15-A of the Interstate Commerce Act allowed reimbursement to the owner of the property performing the same service. We asked for an allowance when we found that our competitors were getting one. We were slow. We grew up as a construction job and finally ended a refinery; we had our equipment and train crews and just kept operating.

It is my understanding that our application to the T. & N. O. and the leasing of the property of the Dayton-Goose Creek was in the alternative, that they either render the service themselves or compensate us for performing it, and they elected the latter method.

As to whether the Missouri Pacific offered to perform the service or give us an allowance—they hadn't at any time come into the

plant and when they came in, they merely filed tariffs to meet the competition of the Southern Pacific.

The haul from the Missouri Pacific interchange is slightly greater than from the Southern Pacific, but the great bulk of the switching time is consumed in breaking up our train and preparing the cars for spotting (p. 5906).

Mr. TALLICHET. Since our return to the questionnaire is in evidence and since we have no corrections to make of the testimony of Mr. Davis and Mr. Shirley, we have no testimony to offer.

Mr. HAGERTY. Has the Missouri Pacific any statement to make?

774 Mr. JONES. Yes, sir; that is, with reference to our statement that the Humble Oil & Refining Company refused to allow us to enter the plant. Mr. David has stated that was because it was an electrified line. They made no such objection to the steam power entering the plant.

Mr. HAGERTY. And you paid the allowance?

Mr. JONES. Yes, sir.

Mr. L. A. DAVID, Assistant General Manager, N. O. T. & M., was recalled and testified as follows (Vol. 6, p. 5907):

DIRECT EXAMINATION

A blueprint of the lay out of the Humble Oil & Refining Company showing the physical connection with the Missouri Pacific was received in evidence and marked "Exhibit A-94½, Witness David."

775 The service as now performed by the industry is more economical than if the railroad were put to the expense of operating a steam locomotive. As an electric line, and the necessity of providing facilities and placing a special steam locomotive to do the work, the expense to the railroad would be more than double what it would be under other circumstances, and the present arrangement is more economical than the railroad could do it as a steam operated railroad (p. 5908).

CROSS EXAMINATION

I see no difference between switching the Baytown plant and switching any other plant of similar size on our railroad. We have other towns having no oil refineries that we switch and in most cases it costs more than 90 cents to switch those towns because the tracks are scattered, have more distance between them and street interference is encountered. Street interference isn't any great factor in working around this plant.

Q. Mr. David, if a customer of yours ordered a car of any particular size, you would attempt to furnish it?

A. Yes, sir.

Q. Regardless of the amount of switching you might have to do to take it out of a yard to deliver to the customer?

A. Yes, sir.

By Dir. BARTEL:

Q. You have to do that under the tariff, don't you?

A. Yes, sir.

By Mr. HAGERTY:

Q. Your answer does not contemplate the movement down to the team track location, that is, whatever switching performance you have to go through in getting down to the team track and also all the switching performance that you have to go through in getting down to the industry, but the question I have refers to the service beyond that point, that is, spotting the car on the team
776 track in a particular location after you get there or the spotting of the car on an industrial track in a particular location after you get to the plant. Compare those two services. Would your answer be the same?

A. Yes; my answer would be the same.

We would not be able to operate the Baytown yard with our regular road engines even though we were a steam line; we would have to assign a switch engine. We would have to have oil and water facilities, which are not now provided, since we are an electric line. The reason we cannot switch the Humble Oil & Refining plant is purely our own disability.

By Dir. BARTEL:

Q. Why wouldn't you switch it with a steam engine?

A. Too much work.

Q. Would you say this would be the equivalent of team track switching?

A. No, sir; not for the number of cars.

Q. Do I understand from that that if you were called upon to switch this plant that you would not regard the service as in excess of simple team track service?

A. It might be a little in excess. If we had 42 team tracks and an average of 4 loads for each one per day and we had 42 industry tracks with an average of 4 loads a day, the performance would be practically the same (p. 5909).

We set the cars out on the interchange track for the Humble Oil Company merely as a matter of convenience and we could place the cars direct at the point of unloading if it was so arranged.
777 If the N. O. T. & M. should switch this plant from its Durham Yard, which is approximately 7,500 feet from the Humble Oil & Refining Company, I understand we could not spot the cars without interruption. However, not having operated in the plant, I would not know just what the duties of the industry's engine are. In the event that we would be required to switch this plant, the cars would have to be classified in our yard before they

were brought in for spotting at the loading and unloading points in the plant (p. 5911).

778 (Hearing Held May 23, 1932, at Kansas City, Mo.)

Narrative Statement of General Testimony

W. N. DERAMUS, with the Kansas City Southern Railway, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 6092):

DIRECT EXAMINATION

My present position with the Kansas City Southern Railway Company is that of general manager. I am also third vice president of the Texarkana & Fort Smith Railway Company. The Kansas City Southern owns all the stock of the Texarkana & Fort Smith Railway Company, except for the directors' qualifying shares. I have been associated with the K. C. S. since November 1909. At one time I was superintendent of the southern division of the K. C. S. system, which took in the territory known sometimes as the Sabine District, that is, Beaumont, Texas, and south, and that brought me into close contact with operation in that territory.

I have very carefully reviewed the statements made in the return by the Texarkana & Fort Smith Railway to the Commission's questionnaire, and find, in at least one or two instances, they perhaps need clarification. For that purpose I have prepared and wish to read into the record the following statement:

Aside from the representations made in answer to the Commission's questionnaire concerning terminal service and the cost thereof, it is desired to state that subsequent inquiry and investigation discloses that the answer to question seven should be elaborated upon in the interest of clarification, and for the purpose of removing any misunderstanding that might otherwise prevail as to the actual situation existing before, and at the time, switching allow-

779 ances in question were established.

When the refineries at Port Arthur, Smiths Bluff, and Chaison first came into existence the intraplant work was not heavy, and was taken care of by the respondent with its regular power assignment. The work was then insufficient in volume to justify the industry in furnishing its own power to handle that special service. As these plants expanded and the output greatly increased it became more and more necessary for the industry to take over and handle its own intraplant switching. It was not unusual in the earlier days to observe the movement of cars from place to place by the use of self powered cranes, and later small switch engines came in to use. As time progressed, larger locomotives were provided, and eventually the plants were not only doing their intraplant work, which had grown in volume, but were performing at their own expense, and without reimbursement, much service which was of a character that the carrier was clearly obligated to furnish at its own expense. This history

applies more particularly to the principal—or larger plants, includi
the Texas, Gulf and Magnolia (p. 6094).

Switch engines were added at first one plant and then anoth
until about 1922 or 1923, when the switching at the refinery a
island plant of the Texas Company was to a considerable exte
performed by engines owned and operated by the oil company. Pri
to that time, it appears as though the Texas Company had esta
lished switch engine service at Port Neches, confined at that ti
almost, if not exclusively, to handling cars moving from one poi
to another within the plant, and more particularly to and from t
privately owned industry docks along the Neches River. When t
allowance here in question was authorized, switching oth
780 than intraplant was also taken over by the industry, and the
after our engines merely delivered and received cars to a
from the agreed interchange track.

The Gulf Refining Company had, until that time, performed ve
little carrier switching in the plant, but had begun some time befo
to handle the intraplant work with company owned locomotives. A
time went along, the Gulf gradually relieved us of more or le
carrier switching, and shortly before the allowance was authorize
took over more of this work.

The Magnolia Company had maintained its own switch engi
and performed its intraplant work with that engine and crew f
quite some time before the allowance feature came up for consider
tion. In the case of this industry, it gradually assumed work f
which the carrier was responsible, and had handled a major porti
of that service for some time before the matter of payment ther
fore, or an election on our part to do the work ourselves, was de
nitely worked out. Coincident with the authorization of the switc
ing allowance, the Magnolia found means by which to take care
its plant work, including that in which the carriers had an oblig
tion or responsibility, and have since continued to do so.

It was in 1924 that the Smiths Bluff plant of the Pure Oil Co
pany was constructed and put in operation. From the most re
able information available at this time, the plant switching was f
a short period, or perhaps only during construction, handled e
clusively by the railway company. Later the oil company provide
its own engine, and took over the plant switching, including t
carrier's part of it. When that plan of operation became effe
781 tive, the oil company, naturally, expected reimbursement to t
extent of its outgo for strictly carrier service performed with
the plant for the carrier's account. Following out the policy heret
fore adopted at other plants, where similar service was already bei
rendered by industry owned locomotives for carrier account, and
lieu of the performance of the service by the carrier itself with i
own engines and crews, upon request of the oil company, and, aft
satisfying ourselves that the allowance was not in excess of the actu

cost of the service to the refinery, it was arranged to pay ninety cents per loaded car for the handling thus performed by the industry for our exclusive account, which was less than it would have cost the railway company to perform the same service (p. 6095).

The records disclose that the first allowance of this nature was made by the respondent to the Magnolia Petroleum Company at Chaison, and was established at seventy-two cents per loaded car. The Magnolia had previously insisted that the carriers take over and do the work themselves. It then developed that the propriety of such allowances had been referred to the Interstate Commerce Commission, and that body had indicated that no objection would be made to reasonable allowances under the circumstances prevailing at that plant. We also discovered that the Southern Pacific had authorized, (fol. A–2132) and were paying, 72 cents per loaded car for service performed by the Magnolia for its account. Inasmuch as 72 cents did not appear excessive, and since we did not care to take over the work ourselves, we likewise authorized and began to pay 72 cents per loaded car. Shortly thereafter the refinery raised the point that the service it rendered was costing more than was being paid by the carriers. Thereupon a cost study was conducted—
782 participated in by the refinery, the Southern Pacific and the respondent—which indicated that strictly carrier service being performed by the plant engines warranted a more liberal allowance, and it was then that the 90 cent rate became effective, which has since continued.

Inasmuch as the per hour industry switching cost was at the inception determined to be low, in comparison with the respondent's cost of more than $11, and since it was impracticable for respondent to perform the service in less time than it was being handled by the industry day in and day out, it was clear to us that the arrangement was not only more satisfactory and convenient to both parties, but more economical from a carrier standpoint. More than 8 year's experience under that plan brings us to the conclusion that the arrangement embraces nothing other than advantage to our operation, and we believe it to be most satisfactory to the industry.

To determine the expense involved in the service performed by the various industries, for railroad as well as (fol. A–2133) industry account, cost studies were made for each of the several operations, and exhibits are now submitted showing the result of these studies, and the allowance authorized as follows (p. 6096):

I now wish to submit exhibits as follows: Exhibit No. A–116—I want to state there for the record that attached to each of these exhibits is a print describing on a small scale—showing in broken yellow and white the point of interchange with these different industries. I though that information might be worth while, being cost study information assembled for the Gulf Refining Company. The test period extended over 10 days, being started November 5 and

finished November 14, 1923. The test period involved 8(
783 loaded and 646 empty railroad cars and 172 loaded and 3
empty plant cars. 156 hours and 15 minutes of engine
was consumed at a total cost of $1,525.81, or an average engine hou
cost of $9,765. Of the time indicated, 28 hours and 30 minutes repr
sent idle time that has been eliminated in calculating the cost
performing service for the railway companies. The refining com
pany handled 807 loaded cars for the two railroads at total cost
$837.54, of an average of $1.038 per loaded car. An allowance
ninety cents per loaded car was then agreed upon as being fair und
varying conditions (p. 6098).

The next exhibit is Exhibit No. A–117, showing cost study info
mation assembled for the Texas Company refinery. The test start
November 20 and was completed December 1, 1923, and involved t
handling of 793 loaded and 836 empty cars for the railway co
panies, and 146 loaded and 604 empty cars in intraplant service.
total of 250 hours and 5 minutes engine time was consumed, at
total cost of $1,705.94, or an average of $6.822 per engine hour.
hours and 6 minutes idle engine time as developed by the check h
been eliminated in determining the cost of performing the servi
for the two rail carriers. The cost study allocated $926.60 to r
service, or an average of $1,168 for the 793 loaded railroad ca
handled. The allowance was thereafter set at 90 cents per load
car (p. 6098).

The next exhibit is No. A–118, showing cost data information
sembled for the Texas Company island plant. The cost study w
conducted over an 8 day period, commencing December 10th a
ending December 17th, 1923. It involved the handling of 160 load
and 132 empty cars for the railway company, and 70 load
784 and 24 empty intraplant cars. A total of ninety hours and
minutes engine time was consumed at a total cost of $374.
or an average of $4.125 per engine hour. Of the total time abo
mentioned, 41 hours and 36 minutes represents idle time that h
been eliminated in calculating the cost of performing switchi
service for the railroad. The cost study allocated $165.10 to ra
road service, or an average of $1.032 for the 160 loaded railro
cars switched. The allowance was set at 90 cents per loaded c

The next exhibit is No. A–119 and shows cost study informati
assembled for the Texas Company asphalt plant. The cost stu
extended from December 4th to 14th, 1923, a total of eleven da
During this period 288 loaded cars and 192 empty cars were handl
for the railway company, and 1,096 loaded and 875 empty cars
the industry. The test period involved two hundred thirty-fo
hours and five minutes engine time, or an average cost of $4.3
per engine hour—this included 49 hours and 19 minutes idle engi
time that has been eliminated in determining the cost of performi
service for carrier. The cost study allocated $378.13 to railroad se
ice, or an average of $1.313 for the two hundred eighty eight load

railroad cars switched. The allowance was established at $1.00 per loaded car (p. 6099).

The next exhibit is No. A–120 and shows cost study information assembled for the Pure Oil Company. The test period was commenced July 10th and ended July 17th, 1924, and involved the handling of 55 loaded and 59 empty railroad cars, and 15 loaded and 84 empty industry cars. The engine time consumed amounted to 72 hours and 30 minutes, or an average of $5.16 per engine hour. The engine time included 59 hours and 18 minutes idle time that
785 has been eliminated in determining the cost of performing service for the railroad company. The cost study allocated $55.64 to railroad service, or an average of $1.011 for the 55 loaded railroad cars handled. The allowance was thereafter established at 90 cents per loaded car.

The next exhibit, No. A–121, shows cost study information assembled for the Magnolia Petroleum plant. The cost study extended over a period of 7 days, from March 25th to 31st, 1924, and involved the handling of 344 loaded and 295 empty railroad cars and 162 loaded and 350 empty industry cars. The engine hour cost was determined to be $6.85, based on the expense for the months of January and February, 1924, during which months a total of 942.5 engine hours were worked at a total cost of $6,456.61. For the test period 32 hours and 31 minutes represent idle engine time and has been eliminated from the calculations in determining the cost of performing carrier service. The cost study allocated $347.52 to railroad service, or an average of $1.01 for the 344 loaded railroad cars switched.

The allowance which had previously been established at 72 cents was thereafter increased to 90 cents, and that rate of reimbursement has continued (p. 6099).

Exhibits A–116 to A–121, inclusive, are true and correct to the best of my knowledge and belief.

The statements were therefore received in evidence and marked "Carriers' Exhibits Nos. A–116 to A–121, inclusive, Witness Deramus."

Mr. DERAMUS. The cost studies include wages paid by the industries to enginemen, switchmen, yardmasters, and clerical employes performing service ordinarily rendered by the carriers, as well as hostlers and engine watchmen engaged for the locomotives.
786 The expense for fuel, water, and lubrication was included on the basis of cost to the industries.

Both classified and running repairs to locomotives are included, the former representing only the proportionate share of the estimated life of the part, while the latter includes the actual expense for the test period.

Depreciation and interest have been allowed on the basis of the cost of the locomotives as furnished by the industries. The taxes were also determined from the records of the industries.

To the foregoing items 10 per cent was added to cover gener supervision.

An examination of detailed figures from which the total engi time was determined, such total time being divided between the ca riers, the industries and inactive time, shows the following (6100):

The engine time charged to carriers includes spotting loaded ar empty cars and moving them out, except when such moves are mad intraplant.

The engine time charged to industries includes delays incident getting started from and returning to the tie-up points, moveme of bad order cars to repair tracks and switching such tracks, awai ing orders, awaiting carriers interchange deliveries, standing b weighing cars, supplying engine, including taking water and fue lunch time—when paid for—time blocked by other plant activiti including track gangs and delays due to accidents. These delays g to make up the idle engine time as set out in the individual exhibit

When two or more services were performed in the sam
787 movement, the time was divided according to the number cars handled and nature of service provided (p. 6101).

In figuring the interest and depreciation on locomotives, we a taking the original cost and not the depreciated cost.

The original cost in each instance, and the depreciation, is figure at 4.5 per cent, which, I believe, Mr. Director, is at least in keepin with good practice, because that contemplates a locomotive life about 22.5 years; and (fol. A-2140), while there are a good man locomotives in service in this country today that have seen more tha 20 years' service—perhaps some that have seen more than 25 year service—it is a fact when an engine reaches that age in life it getting pretty close to the point of obsolescence, and a good many them don't go anything like that long (p. 6101).

The locomotive at The Texas Company (Exhibit A-119) was pu chased in 1909, which makes the locomotive 23 years old. Tha engine is pretty well depreciated, but for the purpose of the co study we used the original cost. I think The Texas people hav replaced that engine with a larger locomotive. We felt from th beginning that something ought to be allowed for the depreciatio on the locomotives owned by the industries and it was our though that the basis on which we proceeded was about as fair and equitab as most any other plan that might be thought out.

I know of no reason why the railroad company could not g into anyone of the plants and serve them completely insofar a carrier service is concerned and also from an intraplant standpoi (p. 6105).

788 (Hearing held May 24, 1932, at Kansas City, Mo.)

W. N. DERAMUS resumed the stand for further examination an testified as follows (Vol. 6, p. 6106):

CROSS EXAMINATION

The term "carrier service" used in my direct examination referred to carrier service within the plant, that service which the railroads are obligated to perform within the industry plants, and which consists largely of, I would say, exclusively of moving loaded or empty cars to the place of loading or unloading and from those points back to the rails of the carrier. "Industry service" has reference to that work which has to be performed in most of the large plants, which is generally termed "intraplant switching," and involves a movement of cars, either loaded or empty, from one track to another within the plant after the original spotting has taken place. The services the carrier is clearly obligated to furnish at its own expense is the carrier service on the plant tracks.

With reference to the consideration in determining what service the carrier is obligated to perform.

It has been the practice for years and years of railroads throughout the country to assume the obligation of setting cars up for loading and unloading. The service rendered by the railroads, or for which we feel as though the railroads are responsible in these particular industrial plants, is precisely similar to that that we render to the plant which (fol. A-2149) does not perform its own switching service. For instance, at any industry where the carrier takes care of the switching service exclusively, it invariably is the practice, and has been for years, for the carrier to spot those cars to the unloading dock or the loading dock, as the case might be. In other words, set them up for loading and unloading wherever the industry might direct it. It is that service that I referred to as work
789 which the carrier is obligated to perform within these plants (p. 6107).

I don't recall any physical condition or circumstance where we would not recognize our obligation to spot the cars at the points of loading and unloading. As to our position, if the plant would not permit us to enter and perform the spotting—I would still feel as though we had that obligation to perform the service. I cannot conceive a plant declining to permit us to enter upon their facilities and perform the service if some other satisfactory arrangement, by which the same service can be performed, is not or cannot be worked out. I cannot conceive of an industry of any size constructing tracks that would not permit the carriers, with whom they connect, to reach the places of loading and unloading. I cannot think of any such situation in connection with these oil industries and other industries along our line (p. 6108).

It is the policy of the Kansas City Southern to perform the service if the industry furnishes the track beyond the right of way of the carrier. It is also our policy to build or construct the track at our expense out to the right of way line, providing that does not involve construction of track for a distance beyond that which we

would consider reasonable, and then look to the industry to c
struct the track and maintain it within the industry.

As to whether the figures used in the cost analyses should incl
interest charges on the original cost of the locomotive instead of
the depreciated value—I will say this: That since these cost st
checks were made at Port Arthur, we have given this whole mat
of cost much more consideration than it had at that time. We h
been interested in some hearings before the Interstate C
790 merce Commission concerning switching allowance incre
in at least two instances at Kansas City since that time.
Commission has also, in the past 4 or 5 years, worked up a form
which is used pretty generally in gathering data with respect
terminal costs, and for use in switching cases that go before
Commission. My thought now is, and has been for the past 3
4 years, that perhaps instead of charging depreciation on a lo
motive engaged in service of that kind, based on the original c
perhaps we ought to merely include an item of interest on the o
inal cost and at a rate that would be fully commensurate; perh
7 or 8 per cent. However, I want to make this statement for
record: That when those cost studies were made at Port Arthur, t
were presented as the best thought obtaining at that time as to
items that should be included properly as cost items, and I wo
not say that it was improper to charge depreciation. We all kn
or I imagine we all know, or I think we ought to know, that un
a large industry or large corporation depreciates its moving equ
ment, as I would term it, and depreciates it at a rather reasona
rate, sooner or later they are going to find themselves without equ
ment and without funds with which to replace that equipment.
preciation, as I conceive it, Mr. Hagerty, is merely for the purp
of—and I have reference to locomotives now—perpetuating a p
of equipment. When the original piece of equipment, under t
scheme, becomes obsolete or goes out of service, for some other rea
it is assumed that another piece of equipment that will cost roug
the same sum of money is going to replace it (p. 6111).

The original cost of the locomotive remains constant, and for t
reason it seems to me that it is proper to base our interest charge
the original cost to the industry.

791 As to whether it was the operating department that
came to the conclusion that it would be more economical
have the industry perform the service at the plant of the Magn
Petroleum Company—it first came to the attention of the operat
department that the Magnolia were doing some of the switching
their plant, and, as all honest operating men usually do, they,
course, permitted the Magnolia to do it. That went along for q
some time. We realized, I believe, from the beginning, that t
were performing a service that we were reasonably obligated to
form. Eventually Mr. Maddox, of the Magnolia Refining Comp
concluded that the carriers—that plant is served by both the So

ern Pacific and our line—should either come into the plant and take care of this work with their own power and own crews and at their own expense or perhaps find some way to reimburse the oil company or refining company for the cost of that service. I am quite sure—I don't want the record to indicate that I am positive about it—that the idea of making an allowance originally to the Magnolia in lieu of the carriers performing the service themselves originated with the Southern Pacific. When the question came up as to whether the Southern Pacific and ourselves were to go into that plant and perform the service that we were required to perform within the plant enclosure, the Southern Pacific appreciated that if we had to do that it was going to be a terribly expensive thing for them, (fol. A-2156) and I believe they probably suggested an allowance to the Magnolia in lieu of serving that plant directly themselves (p. 6112).

Q. May we understand by that that the Magnolia people originally applied to the Southern Pacific?

792 A. Yes—well, let me modify that a little. I think they did. I think it was their intention to have both of the 2 carriers in the original conference at which this whole matter was discussed, but our representative in that territory on that particular day happened to be out of town, and I believe the conference was between the Magnolia and the Southern Pacific.

Q. Operating respresentatives?

A. Operating representatives.

Q. And then what happened? Did the Kansas City Southern just voluntarily follow what the Southern Pacific did?

A. Well, we learned later on that the Southern Pacific—no; let me make this statement: There seemed to be some misunderstanding or some apprehension on the part of the Southern Pacific and perhaps on the part of the Magnolia as to whether an allowance of that nature would be entirely proper and legal. With the thought of clearing up any misunderstanding in that respect, the Magnolia—and perhaps the Southern Pacific joined in it; I don't just recall now—decided to put the situation as it existed there in the Magnolia plant before Mr. McGinty, of the Interstate Commerce Commission, for consideration and advice as to whether that sort of an (A-2157) allowance would be looked upon with favor or otherwise by the Commission. After due consideration, I suppose, the Commission indicated that there probably would not be anything wrong with making a reasonable allowance under the circumstances existing there in the Magnolia plant. It was in that way that the inception of this whole thing got under way (p. 6113).

793 The Southern Pacific made the allowance first, and it seems to me that the consideration for an allowance came through our traffic department, although I am not altogether certain about it. If I recall correctly, consideration was given to whether it would be more satisfactory and less expensive for us to go in and take over the switching, or make the same allowances as the Southern Pacific was

making. As I remember, we elected to make the same allowance, because we felt it would save us money and it would be more satisfactory to the industry.

As to whether the amount of the allowance we should pay was the same that the Southern Pacific was paying—we were zealous not to make an over-allowance. We wanted some cushion behind this allowance that would give us at least a reasonable assurance that the allowance was not in excess of what it was costing the refinery to perform our service within the plant. The traffic department determined what the allowance should be, and I imagine, the president had something to do about it (p. 6116).

The Magnolia Company was performing all of the switching for some little time prior to the allowance. At the beginning, the carriers performed all of that service, and, as I have said before, as time progresseed, the need for their own power or engines to handle strictly intraplant service developed and evidently the same power was used in performing certain carrier service within the plants.

At the plant of the Gulf Refining Company, at Port Arthur, the industry performed railroad service on the industrial tracks at the plant pretty largely right up to a short time before the allowance was made. In 1919, the Gulf Company put one small engine in service. That engine was confined largely, if not exclusively,
794 to handling intraplant work. In the latter part of 1923, the Gulf Company put two engines in service in their plant, which were performing a great deal of service that we were under obligation to perform, and in order to rid themselves in part of that expense, they took one engine off and told us to come in and perform our job as we were obligated to do. The engine was off for quite a number of years. In other words, the Kansas City Southern, for a good many years, was performing railroad service on private tracks of the Gulf Refining Company.

As to the reason for the industry injecting itself into the work of performing a service for the railroad—insofar as the Gulf situation is concerned, the provision of locomotives to handle its intraplant work had its inception in the minds of the Gulf people in connection with quite an extensive expansion and perhaps maintenance program that was undertaken by the Gulf Company probably in the latter part of 1919. There was so much activity in the plant in the movement of materials from one place to another for new buildings or new construction purposes and for maintenance purposes that they found need at that time for having an engine to be used exclusively in intraplant service. I believe that was the thing that prompted the Gulf Company in providing a locomotive at the beginning. Later on their people took over some of (fol. A-2164) our switching; did that in a voluntary way; probably one yard master trying to help out another yard master, and from time to time the refineries expanded their service, or the Gulf Refining Company expanded its service until about in the early part of 1924 they were doing most of our switching in the plant (p. 6118).

795 When the improvements at the Gulf plant got well under way, the industry found that they could use their engine in moving their business from one point to another in the plant and held on to it primarily for that purpose at the time, but there was perhaps some idle time on the part of the crew or time that might have been idle otherwise, and they used that to help the railroad out. That was in the beginning, and as time went on, that plan of operation spread. We were quite willing that it should spread, because we looked upon it as a very satisfactory arrangement from our standpoint, and economic even though we would eventually have to pay a reasonable allowance for the service. The wonder to me is that we did not try to work out something like that before. I don't think the industry could get along without a system of tracks within the plant, but I think they could get along without the interchange service they provide, and call upon us to perform the spotting. However, the intraplant switching is not a service that the carrier ordinarily renders for the compensation received in connection with the line haul movement (p. 6119).

If I were asked the same questions with respect to the operation of the plant at Port Arthur, my answers would be the same. The Kansas City Southern performed the switching at that plant up until the time the allowance was made, which covered a period of about a year.

I don't know what caused the change at the island plant, except that they had a good deal of intraplant work there, the same as they had in all of these larger plants, and it was perhaps because of that fact that intraplant service performed by us was running up to a pretty high cost. They probably figured that they could take over that service and have a more elastic working arrangement
796 without very much increased cost compared with what they were paying us for moving the cars to and fro within the plant (p. 6120).

At the plant of The Texas Company, known as "The Texas Company Works," at Port Arthur, the plant is in about the same category as the Gulf Company, except that The Texas Company was performing its own switching for a couple of years ahead of the Gulf Company. They were doing their intraplant work, perhaps not exclusively but almost, f quite a number of years. It might run back as early as 1911 or 1912. They provided themselves with an engine to perform the intraplant work rather than pay us for that service.

We performed that service with our power in the beginning, but as the plant grew and as the need for intraplant movements increased, the cost of that service increased in proportion, and The Texas Company was prompted in putting their own engine in as a matter of economy. They gradually took over the work that we were doing, probably upon the action of yard crews or local people, and without the knowledge on the part of our head officers. In other words, I will do something for John and he will do something

for me, and the practice just grew. The refinery was willing to do this work as indicated by the fact that they were doing it and we permitted them to do it. The allowance feature was handled through the traffic department (p. 6122).

The Kansas City Southern performed the switching at The Texas Company Port Neches plant up until about 1922 or 1923, prior to the establishment of the allowance. The Port Neches plant had its own engine which confined its activities largely to the handling of intraplant cars and particularly to the movement of traffic of
797 what we call the Asphalt Warehouse, their manufacturing plant, and the docks along the Neches River. It was of some considerable importance to us to work the matter out with The Texas Company so they could look after our switching in that plant. Port Neches is quite some distance from our center of activities. Our yard at Port Arthur is about 11 miles from the plant and we had some difficulty at that time in taking care of all the work in Port Neches with one engine without running into overtime. Our switch engine had to leave Port Arthur in the morning and run to Port Neches and perform the work at The Texas plant and return to our yard. We were not always able to make that trip and perform the service at Port Neches. Because of the peculiar condition at Port Neches, I am not sure but what we urged The Texas Company to take over that work (p. 6123).

During the period of construction at the plant of the Pure Oil Company, at Smith's Bluff, we did all the switching, intraplant and otherwise. Sometime after the plant was completed and placed in operation, the Pure Oil Company provided an engine at its plant, and coincident with the provision of this locomotive, it was worked out that they should take over our switching and they have since performed that work at 90 cents a car. We made a cost study and determined that 90 cents per car was not out of line. We not only determined to our satisfaction that the 90 cent allowance was less than it would cost the Kansas City Southern to perform the service, but we also found that it would be less than it would cost the industry to perform the service.

We determined what it would cost the Kansas City Southern in this way, we knew at that time that our yard engine cost approxi-
mated something more than $11 per hour, not including taxes
798 or interest on investment. The cost studies indicated that the engine hour cost of the industry was much below that figure. We did not believe that we could perform the switching as needed in the plant, day in and day out, in less time than the refinery could perform the same work. For that reason, it appeared clear to us that it was much more economical to have the refineries perform their own switching.

As to whether in determining whether it would be more economical to have the industry perform the switching—we simply convinced ourselves that the refinery cost was much under what our cost

would be (p. 6125). If the Kansas City Southern undertook to perform the identical service now performed by the Magnolia Petroleum Company at Caisson, Texas, I imagine in normal times they would require almost constant service of an engine, but not just at this time. As to whether the plant engine and our engine could work simultaneously in the plant without interference, by working together, as I imagine the forces there would do, I do not imagine there would be very much interference one with the other (p. 6126).

The cars used in plant service, that is, spotting at one loading point and then moved from there to another point to complete loading, for the purpose of determining the cost of handling cars within the plant, I would regard that as plant service.

As to the method that the railroads use in computing the time where the railroads perform the intraplant service and the way we would compute the time when we perform the service—if we were doing the switching in anyone of these plants—say the Magnolia, and they partly loaded the car at this location and wanted it moved over to another location to complete loading, we would look upon that, insofar as charging for that extra movement is concerned, as an intraplant move.

If we were performing the service in the plant and it was necessary for the plant to complete loading to have more than one spot within the plant, we would charge them for that extra movement, but we would not charge them anything for car rental or demurrage.

799 I imagine we would compute the basis of time when the cars were set on the interchange track and until they got back to the interchange track. I think it could be computed on another basis—it could show the time for unloading, if it went in loaded, or if it was partly reloaded at the original loading location, the time it was reloaded there, and take into consideration the performance at the next place of loading, and the point where the loading is completed. We have demurrage rules to cover those situations.

In handling the tank car shipments of asphalt at Port Neches, it was my understanding that those cars are loaded at high temperatures, and often times pulled out and permitted to cool off, switched back to the rack for topping, or further loading, and weighed on the track scales. All of that would be included as intraplant switching (p. 6135).

H. A. Weaver, with the Kansas City Southern, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 6138):

DIRECT EXAMINATION

I am vice president in charge of traffic of the Kansas City Southern and second vice president of the Texarkana & Fort Smith Railway. I became vice president in charge of traffic on June 1, 1930, and prior to that time for about one year I was freight traffic man-

ager and prior to that general freight agent. I was in the service of the Kansas City Southern system at the time the allowances to the refineries in the so-called Sabine Basin District were established.

The question of allowances first came up in October, 1921, at a conference between Mr. Maddox of the Magnolia Petroleum Company and Mr. J. O. Hamilton of the Texarkana & Fort Smith Railway and Mr. C. K. Dunlap of the Southern Pacific. At
800 that time Mr. Maddox said that his engines were in rather bad condition and that he had made some investigation and found that they were doing a good deal of the work that the railroad company should do in the way of spotting cars and handling loads to and from the connection. There wasn't anything further done until 1923 so far as I recall it.

It seems that Mr. Maddox tried to arrange a conference with our superintendent, who happened to be out of the city, but he did look over the terminals with the operating people of the Southern Pacific. At that time he asked that the Magnolia Petroleum Company be—no, that the Southern Pacific Company come in and perform the service in the handling of cars between the Texas & New Orleans and the Magnolia tracks. In April 1923, April 27, 1923, Mr. Maddox wrote Mr. J. F. Holden, who was at that time vice president in charge of traffic, in which he said that the Magnolia Petroleum Company were (fol. A–2196) performing a good deal of service that the railroad, the Texarkana & Fort Smith Railroad Company, should perform, and that he had made an arrangement with the Southern Pacific Company whereby the Magnolia Company would perform that cost for them at a cost of 72 cents per car, and said that, "possibly we might desire to make the same arrangement rather than to switch the plant ourselves" (p. 6139).

That allowance was published by the Southern Pacific and we, rather than go and serve the plant, said that we would make the same allowance as the Southern Pacific and the Magnolia would perform the service for us.

That allowance was published first in the Texas & New Orleans Switching Tariff effective May 25, 1923. For the Texarkana
801 & Fort Smith we published it effective June 20, 1923, or approximately 30 days later. Prior to the publication of this allowance of 72 cents the matter was submitted to the Interstate Commerce Commission in the form of a joint statement signed by Mr. Maddox for the Magnolia Petroleum Company and the attorneys for the Texas & New Orleans to determine the legality of such an allowance. The secretary of the Commission replied that if the service performed was a service that the carriers should perform there was nothing illegal in making the allowance, and they referred the secretary to a conference ruling of the Interstate Commerce Commission, No. 360, which reads as follows: "Held, that an (fol. A–2197) allowance purporting to be made under Section 15 must be regarded as a concession from the railway unless duly published by

the carrier in its tariffs and thus made available to all shippers furnishing a like facility or performing a like service of transportation in connection with their traffic."

After receipt of this letter from Mr. Maddox, Mr. Holden wrote to The Texas Company, Mr. Jervis, and to Mr. Ellis of The Gulf Refining Company suggesting to them that possibly they might want to make an application to our company for a similar allowance, as their companies were performing the same character of service as the Magnolia was performing for the Texarkana & Fort Smith.

Tests were run by both representatives of the Texarkana & Fort Smith and the Southern Pacific Company at the Texas Refining Company's plant, the Island plant, the Asphalt plant, and the Gulf Refining Company's plant to determine the cost of the service which the refineries were performing which we should perform. Those costs have been submitted by Mr. Deramus. The ultimate
802 conclusion finally was that, after the tests were made at the Gulf Refining Company plant and The Texas Company plant, that the allowance should be 90 cents per car. This understanding was reached at a conference in Mr. Dunlap's office in Houston along in 1923, I think (p. 6140).

Subsequently the Magnolia Petroleum Company felt that they were not getting a sufficient amount of money for the service that they were performing for the carriers and they asked that an increase be made to $1 per acre. A test was made between the Southern Pacific, jointly the Southern Pacific and the Texarkana & Fort Smith, in making a check of the Magnolia plant, and it was found that the cost was something over $1 a car by that check; so we then agreed to increase the allowance to the Magnolia Company to 90 cents. We, of course, realized that these companies were performing a service that we should perform at their plants and without any cost to us, and we would have been very glad to see that arrangement continued, but after the Magnolia Company had made a demand that the companies either perform the service or pay them for doing it we elected to pay them, and we concluded that it was nothing more than proper that we should also make the same offer to the other companies (p. 6141).

As to why we did not comply with Mr. Maddox's request in 1921 to either perform the service or grant an allowance, until 1923—we were perfectly willing to let the industry go ahead and perform the service as long as they were doing it. The Magnolia Company did not request an allowance.

At any rate, in 1921, Mr. Maddox expressed his opinion that the industry was doing work in the plant that the railroads should perform. We would not have hesitated to comply with Mr.
803 Maddox's suggestion that we perform the service if he had so demanded, but the industry was performing the service, and as long as they were willing to do it we were willing to let them. I regarded the conference of 1921 as merely starting the allowances in the Sabine District.

The allowance to the Magnolia Petroleum Company was first published in Texarkana & Fort Smith tariff 2860, I. C. C. 415, effective June 20, 1923. The tariff in effect today is 2860–C, issued June 2, 1926, effective July 10, 1926. The increase from 72 to 90 cents a car was published in tariff 2860–B, I. C. C. 161, effective June 1, 1924. The allowance to the Gulf Refining Company was published in Texarkana & Fort Smith tariff 2880, I. C. C. 158, effective March 31, 1924. Allowances to The Texas Company were published in Texarkana & Fort Smith tariff 2881, I. C. C. 159, effective March 31, 1924. Allowance to the Pure Oil Company was published in Texarkana & Fort Smith tariff 2902, I. C. C. 164, effective October 3, 1926 (p. 6144).

CROSS-EXAMINATION

The first intimation that we had with reference to an allowance was a letter from Mr. Maddox to Mr. J. F. Holden dated September 27, 1923. In that letter Mr. Maddox said that he had made a demand on the Southern Pacific to perform the service and the Southern Pacific asked him to perform the service for them and that they had agreed upon the price of 72 cents. We agreed to allow the Magnolia Company the same amount to perform the switching for our account.

The matter of an allowance was first brought to my attention by that letter of Mr. Maddox where he had made an arrangement with the Southern Pacific, and suggested that we might desire to make a similar arrangement rather than perform the service ourselves.

804 A letter from Mr. Maddox to Mr. Holden was received in evidence and marked "Commission's Exhibit No. A–122, Witness Weaver" (p. 6147).

After receiving this letter, we agreed to make an allowance or allow the Magnolia Company the same amount that the Southern Pacific was allowing them to perform the service for our railroad. We elected to get them to perform the service instead of performing it ourselves because we thought that was cheaper.

Our operating departments are rather averse to switching plants; they say it is expensive, and where they can make an arrangement to have the plant switched for our account, it is undoubtedly a saving to us. That was one consideration why we voluntarily made this allowance and another was that we wanted to meet the competition of the Southern Pacific (p. 6147).

As to whether I described the situation to my superiors as a matter of economy in operating the Magnolia plant—so far as I was concerned, I merely handled it as a matter of competition of the Southern Pacific. As a member of our traffic department, I have treated this matter of allowances to the oil refineries to some extent from a competitive standpoint.

There was nothing said, as far as I know, about economy in allowing the Magnolia plant an allowance of 72 cents, but we realized we could not perform the service for that amount.

A copy of a letter dated June 1, 1923, addressed to Mr. L. F. Loree, Chairman of the Executive Committee, New York City, signed by Mr. J. A. Edson, President of the Magnolia Company, was received in evidence and marked "Commission's Exhibit No. A–123, Witness Weaver."

The letter from Mr. Edson to Mr. Loree does not contain any reference to operating efficiency or operating economy
805 as a consideration for making the allowance by the Kansas City Southern. So far as the Kansas City Southern is concerned, the allowance to the Magnolia Company was based purely on a competitive consideration (p. 6149).

The statement in the letter "the Gulf Refining Company and The Texas Company have been notified of our willingness to grant them the same concession but neither of them have asked us to act thereon," does not infer that the allowances which were subsequently made to the Gulf Company and The Texas Company were predicated on competition which induced the allowance to the Magnolia Company. The arrangement made with the Magnolia Company, the agreement to allow them a certain revenue, 72 cents per car, for the performance of the service for us, established a precedent that was applied to the other plants. In other words, if we were going to make an allowance to the Magnolia for services that they were performing for us, we were willing to do the same at the Texas and Gulf plants. Mr. J. F. Holden wrote the Gulf people and the Texas people a letter suggesting that possibly they might desire to file an application for an allowance. Up to that time, as far as my knowledge goes, neither the Gulf Company nor the Texas Company had asked the Kansas City Southern to make an allowance. Subsequent to Mr. Holden's letter, the Gulf Company and the Texas Company made formal applications for an allowance direct to Mr. Holden's office (p. 6151).

The granting of allowances to all of these oil refineries were based on competition and discrimination (p. 6152).

806 Mr. J. O. HAMILTON with the Texarkana & Fort Smith Railway was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 6154):

DIRECT EXAMINATION

I am general freight agent of the Texarkana & Fort Smith Railway. I have held that position since May 1917.

Mr. Weaver's testimony, which stated that the matter of furnishing switching service to the Magnolia Company was first brought to our attention in 1921, is correct. I was in Dallas, Texas. Mr. Maddox mentioned to me the fact that the Magnolia people were performing certain service for both the Texas & New Orleans and

the Texarkana & Fort Smith which the (fol. A–2219) carriers should perform, and he stated that he either had or was going to take the matter up with the Texas & New Orleans, as to what they should do about it, and wanted me to confer with our people. On the 19th of October when I was in Dallas I wrote to our assistant to the president, Mr. Williams, at Beaumont and made mention of the situation, and he replied on the 22nd that he would be glad, with Mr. Maddox and any other officials of his company, and I believe also the Texas & New Orleans, to discuss the situation. I advised Mr. Maddox on October 25, 1921, that our people would meet him in Beaumont to look over the Chaison situation at any time he might select.

I don't recall any correspondence on the subject but there was a conference at Beaumont sometime in December, 1921, and the next thing I received was a notice of publication of the allowance by the Texas & New Orleans Railroad (p. 6155).

CROSS EXAMINATION

807 The allowance was also effective on merchandise cars switched by the Kansas City Southern from its warehouse to the Magnolia Refinery. The tariff publication made no distinction between road haul and switching traffic. In other words, we made an allowance in addition to the switching service.

I notice some few tariffs said "road haul traffic," but the tariffs of the Texarkana & Fort Smith and the Texas & New Orleans in the Sabine district make no distinction as between those two propositions. The switch haul traffic, though, is not a very large factor compared with the total movement, because each road serves the plants and the traffic usually going out over the Texas & New Orleans is switched by the Texas and New Orleans as the initial line, and that is true with Texarkana & Fort Smith. Down at the Island plant (fol. A–2223) of the Texas Company, though, we serve it exclusively, but at Port Arthur at the up town plant of the Texas Company it is served both by the Texarkana & Fort Smith and the Texas & New Orleans, and that is true of the Gulf Company at Port Arthur and the Magnolia Refining Company at Chaison (p. 6158).

I did not take the matter of an allowance up with our operating department until 1923, because I didn't know just what the final negotiations were going to be between Mr. Maddox and the Texas and New Orleans (p. 6159).

By Mr. MADDOX:

Q. I would like to ask Mr. Hamilton a question. I want you to read that letter, Mr. Hamilton, and see if you recognize it.

A. This is a letter signed by me personally dated October 25, 1921.

Q. Will you please read that into the record?

808 A. "W. M. Maddox, traffic manager, Magnolia Petroleum Company, Dallas, Texas. With reference to our conversation

in Dallas last week about your prospective visit to Beaumont to confer with Messrs. Williams and Waid pertaining to the Chaison switching situation, Mr. Williams advises he will be glad to see you and go over the matter, but it might be well for you to advise him when you will be there as he desires to be on hand when you make the trip. Suggest you phone him in advance of your coming so you can both have the opportunity of going over the situation with each other." Signed J. O. Hamilton.

Q. And indicating a carbon to whom?

A. To Mr. G. P. Williams. He was the assistant to the president of our company at Beaumont.

Q. That indicates that the matter of the service which you were discussing was referred to Mr. G. P. Williams, does it not?

A. Yes, sir.

Q. That was in October——

A. October 25, 1921.

Q. You recognize that as your letter?

A. I do.

By Mr. DAVIS:

Q. It is your signature, is it?

A. It is.

C. E. JOHNSTON, with the Kansas City Southern Railway and Texarkana & Fort Smith Railway, was called as a witness, being duly sworn, testified as follows (Vol. 6, p. 6160):

DIRECT EXAMINATION

I am president of the Kansas City Southern and also president of the Texarkana & Fort Smith Railway Companies. I became
809 president of those companies January 1, 1928, and succeeded Mr. J. A. Edson.

Prior to the establishment of the allowances in the Sabine District, I was general manager of the Kansas City Southern and third vice president of the Texarkana & Fort Smith Railways. I discussed with our operating officers the filing of tariffs with respect to switching the Magnolia Refinery. I also discussed the matter with Mr. Edson for sometime after Mr. Williams received the information from Mr. Hamilton after his talk with Mr. Maddox of the Magnolia Company.

The matter of making allowances from the railroad's standpoint was one of economy.

In the first place, the refineries in that district started with nothing and we did the switching when these plants were small. These plants in the district grew and expanded fast and the situation grew into the condition at the Magnolia and the same at the other plants that caused the refineries to feel that they were doing too much work for the carrier without compensation. We had gone

along with it for a good many years without having to perform considerable work that perhaps we were obligated to perform, and, naturally, we disliked very much to see our cost increased, and the matter of an allowance as against doing the actual service, performing the actual service, was a question of dollars and cents. We recognized all the time that the refineries had a perfect legal right to call upon us to perform the service or compensate them for doing our work for us; and after the matter had been agreed upon by the Southern Pacific and the Magnolia and at the price per car that was set up it was very clear to us (for. A–2228) that we could not perform that service within the plant for the amount per car
810 that had been agreed upon and we were under the circumstances agreeable to that figure (p. 6162).

By Mr. BARTEL:

Q. Mr. Johnston, you used the term a moment ago that you were perhaps obligated to perform that service. Is there any doubt in your mind as to that?

A. Not at all; but some doubt as to the extent of the service that we were obligated to perform in many instances, because conditions are so different at the different industries.

Q. Will you just elaborate a little more on them? Just what do you mean, that you might not be called upon to perform all the work?

A. Well, what I mean by that is this: Each situation must be determined upon its merits. In the first place, we are constantly striving to create industry, create tonnage, and in that way undertake to prevail upon industries to locate on our tracks, which means business for us. It is to our interest to have that industry prosper, expand, and increase their output; and in many instances there are different arrangements as regards tracks, track construction, track maintenance and time of switching and the way in which the service is rendered, and for that reason it is difficult to determine just where your obligation from a fair dealing standpoint ends. We undertake to work these out on a fair basis to the industry and ourselves. We want the industry to be satisfied with the service and we want, of course, our own (fol. A–2299) costs kept down to within reason (p. 6162).

Q. Well, is there any industry that is served by your line where the service required in order to spot the loads or place the empties should exceed what you regard as being reasonable for the carrier to perform?

811 A. Yes, I should say there are in certain cases. I have in mind, for instance, a long spur track where we would have to go a mile or two away from the main line to handle a car of coal or a car of some other commodity; perhaps the expense going out there is more than we would realize out of the shipment. At the same time, the industry is there and it must live and we hope it will expand to a volume that we can afford to do it.

Q. Well, now, the illustration that you just gave, would you feel that it is not your obligation to go out there?

A. Why, no; I would say that it is our obligation to go out there as long as we were instrumental in locating the industry, encouraging it to come, and maybe if something happened, that his market wasn't as good as he thought or for some other reason, we are obligated to take care of him (p. 6163).

Q. Well, what I had reference to, Mr. Johnston, was whether there is any industry on your line which because of the amount of trackage it has or for some other reason you feel it would be beyond your obligation to perform either the spotting of the loaded cars, or the placing of the empties on a switch track?

A. I would say, generally speaking—I know of no par- (fol. A 2230) ticular industry as outlined in your case you mention, but as a general proposition I don't think there is any question but what we are obligated, particularly so in performing the line haul on business, to spot the shipment at the point of unloading of the industry.

Q. You say particularly on line haul. Would the same thing apply to switching?

A. No; you can not go to the same extent in switching
812 *because you don't get paid for an unlimited amount of service.*
I would say generally in switching that you do have to spot cars, but there is a limit, I think, to how far we would be obligated to do it for the charge that is made.

Q. Well, would you say that there is the same obligation to spot cars in switching service there is on line haul service?

A. Yes; to a large extent.

Q. To the full extent?

A. Well, perhaps so, but I think on a lot of it we would lose money.

Q. I am just trying to find out.

A. I think you are obligated to spot cars at the point of loading on switch business (p. 6163).

CROSS EXAMINATION

With respect to furnishing the refineries with any other or different service than we were furnishing prior to the time when allowance became effective—we were perfectly satisfied to go along as we were, by reason of the fact that it meant additional cost to us. In connection with the Magnolia case, the negotiations were largely with the Southern Pacific in the first instance.

I think I recall a conversation I had with Mr. Waid, vice president of the Southern Pacific, during that period, at which time we discussed the general situation of performing service at not only this plant but at other plants in the district and the matter of taking care of the cost to the refinery for the work performed for the carriers. We agreed, however, on nothing in the way of a uniform position (p. 6164).

At the time I was general manager and prior thereto, our railroad was performing the spotting service with its own power.

813 As to the circumstances which caused the railroad to cease performing the service—there was a little perhaps of several things that happened. In the first place, the general yardmaster or the yardmaster of the railroad worked very closely with the yardmaster of the refinery, and if they could trade work among themselves, it was permitted. Again, that territory grew very fast and as the refineries installed switch engines it meant a saving in cost of operations for us to permit the refineries to handle as much of our business as they saw fit and convenient to handle, and that sort of grew into a regular practice.

The principal topic of conversation between my executive, the president, was largely the operating cost. I discussed the subject with the vice president in charge of traffic from every standpoint many times during the period of negotiations. I was in on the trade with respect to whether the 90 cents should be allowed or disallowed—and it was a trade as to the cost studies, because the figure was fixed arbitrarily after we had the result of the cost studies lower than the test showed the cost studies would be. I not only was instrumental in that test but reported it and recommended it to our president.

It was our president who finally approved the allowance, but the figures of the cost originated through my department except in the case of the Magnolia, which figure had already been established by the Southern Pacific. We satisfied ourselves that we could not do the work for that price so it was agreed that we would make the same 72 cents allowance.

814 The matter of whether an allowance should be or should not be granted to the Magnolia plant, was controlled, in the first instance, by what the Southern Pacific did (p. 6166).

As to what was meant by the statement "that the yardmasters got together and traded work and that trading was permitted," I mean our yardmaster had his crew and engine lined up to set the cars inside the plant, and the yardmaster and the crew of the refinery had their work lined up, so that perhaps in those two lineups there would be some interference if they carried them out the way they had lined them up; so they would get together and work it out among themselves to perform the service in the most satisfactory manner. I don't mean to say that we would go in and undertake to do all of the plant service, but they so lined up their work that they could both operate to advantage, and if one moved a car for the other fellow, maybe the next day the other fellow would move a car for him, and that is the way it worked. We permitted that because it was an advantage to the refinery.

As to whether this method of switching had the effect of the railroad performing the service for the plant for which no charge was made, in violation of the tariff—I wouldn't say so. For in-

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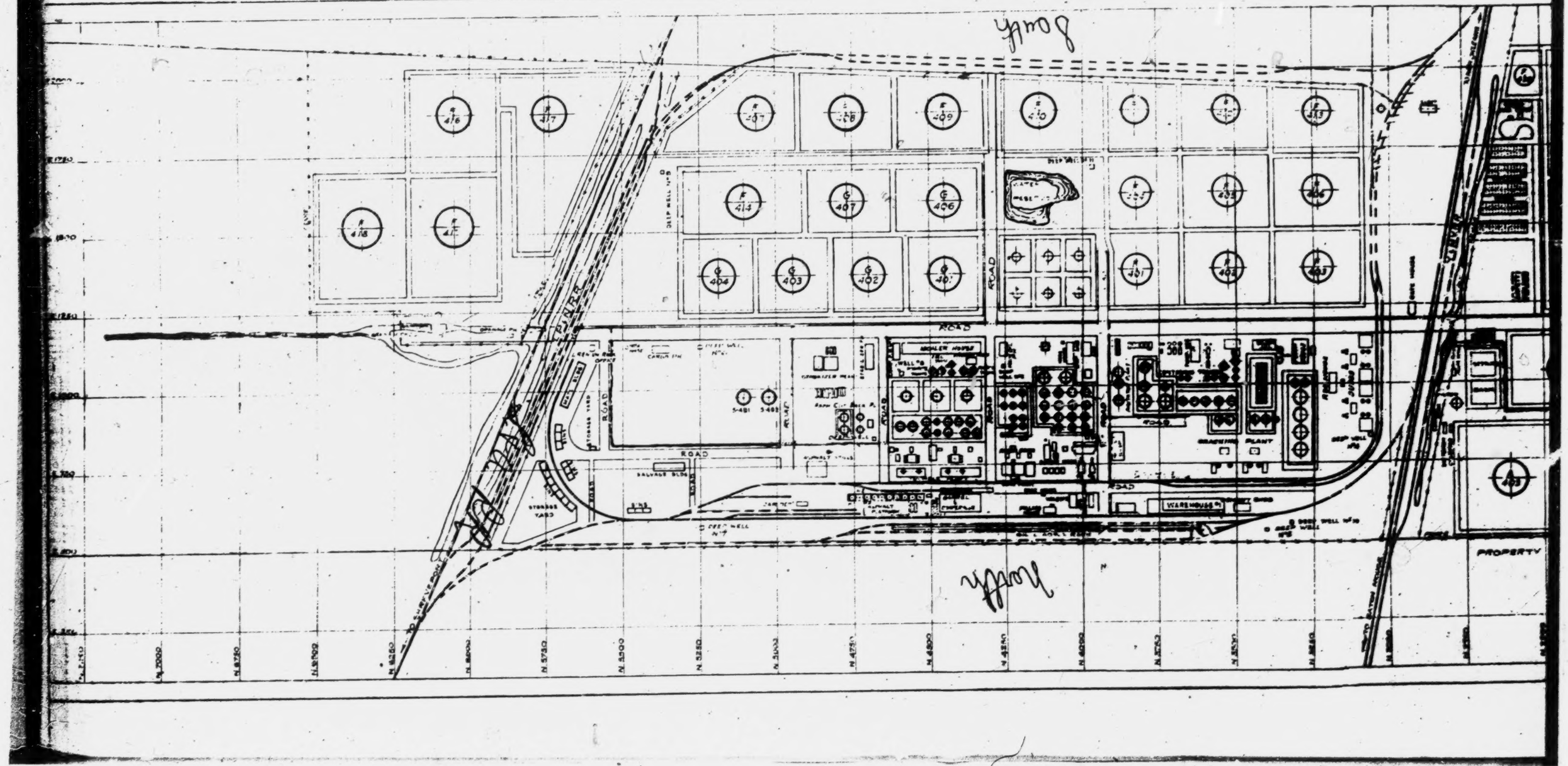
EXHIBIT A 23


ROAD
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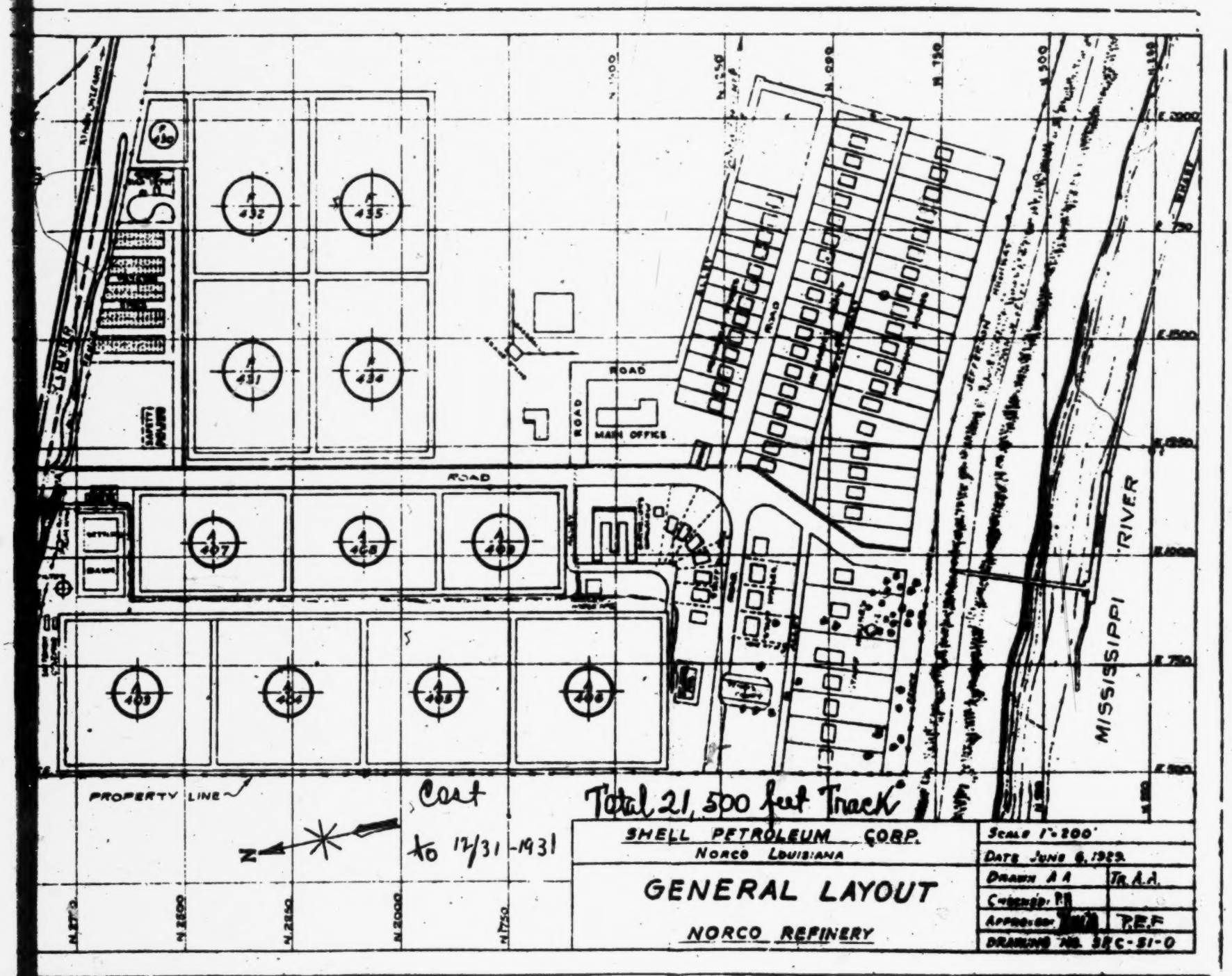
ROAD
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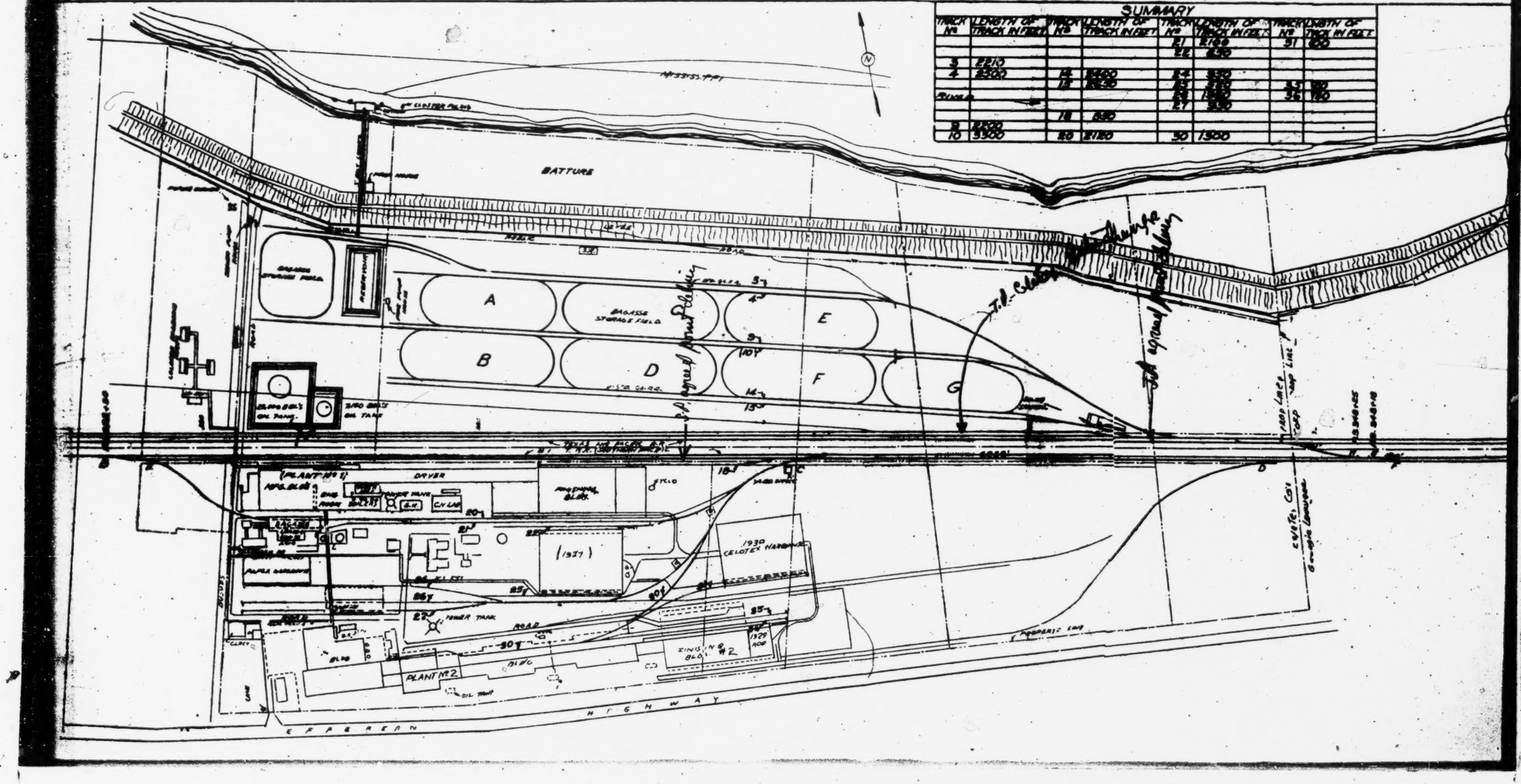
MAIN OFFICE
MISSISSIPPI RIVER
PROPERTY LINE
N
Cost
to 12/31-1931
Total 21,500 feet Track
SHELL PETROLEUM CORP.
NORCO LOUISIANA
GENERAL LAYOUT
NORCO REFINERY
SCALE 1"=200'
DATE JUNE 6, 1929.
DRAWN A.A.
TR. A.A.
CHECKED: P.R.
APPROVED:
P.E.F.
DRAWING NO. SEC-51-0

EXHIBIT A-24

SUMMARY

TRACK No	LENGTH OF TRACK IN FEET	TRACK No	LENGTH OF TRACK IN FEET	TRACK No	LENGTH OF TRACK IN FEET	TRACK No	LENGTH OF TRACK IN FEET
				21	2100	31	800
				22	450		
3	2210						
4	2500	12	2400	24	350		
		13	2450	25	350	35	700
SIDING				26	1800	36	700
				27	350		
		18	850				
9	4200						
10	3300	20	2120	30	1900		



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...00		
...00		
...00	35	180
...00	36	1110
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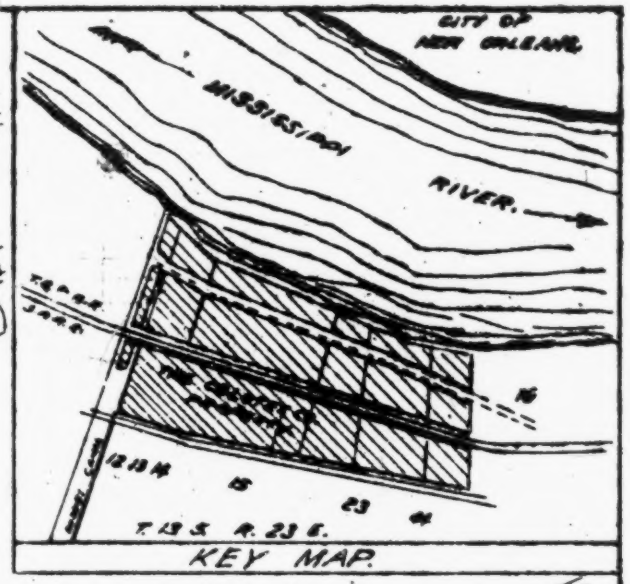
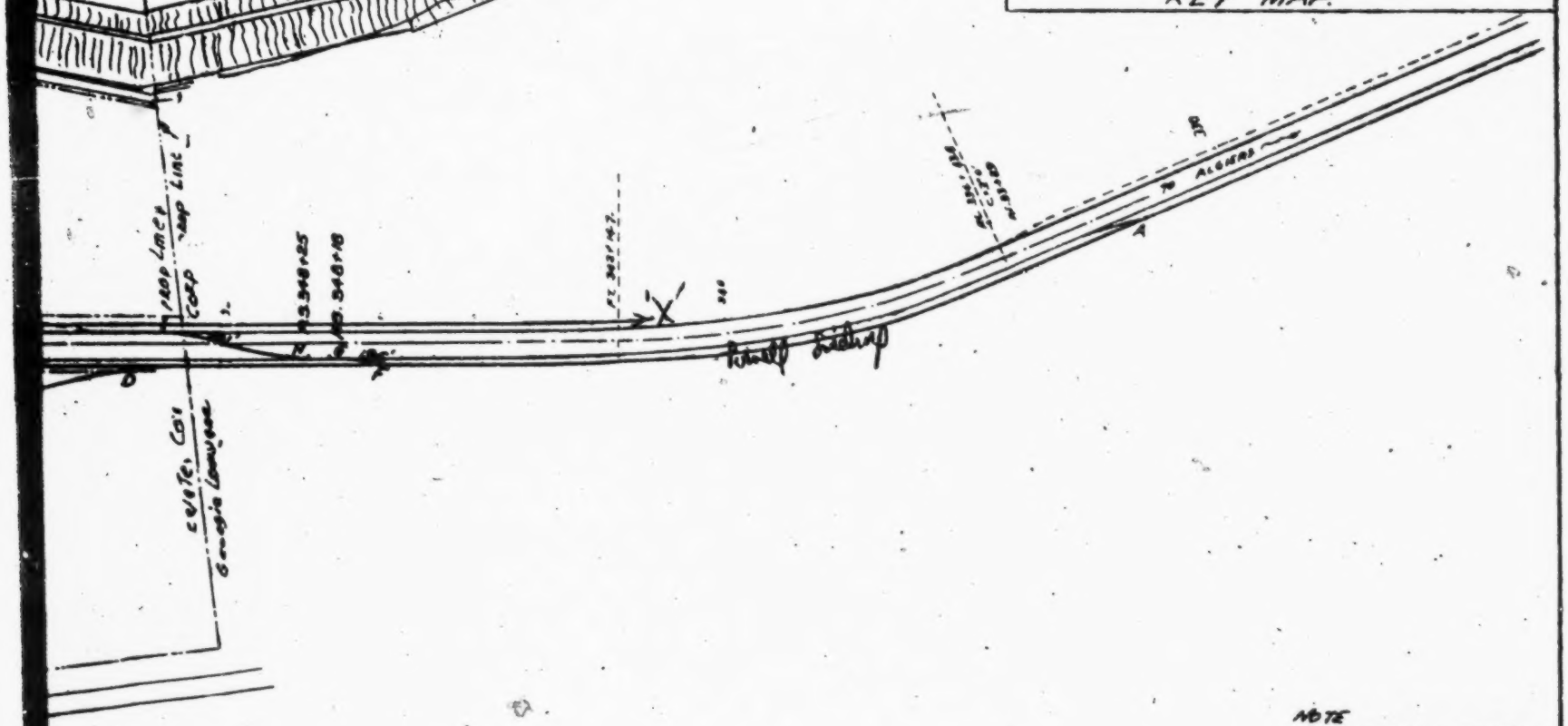
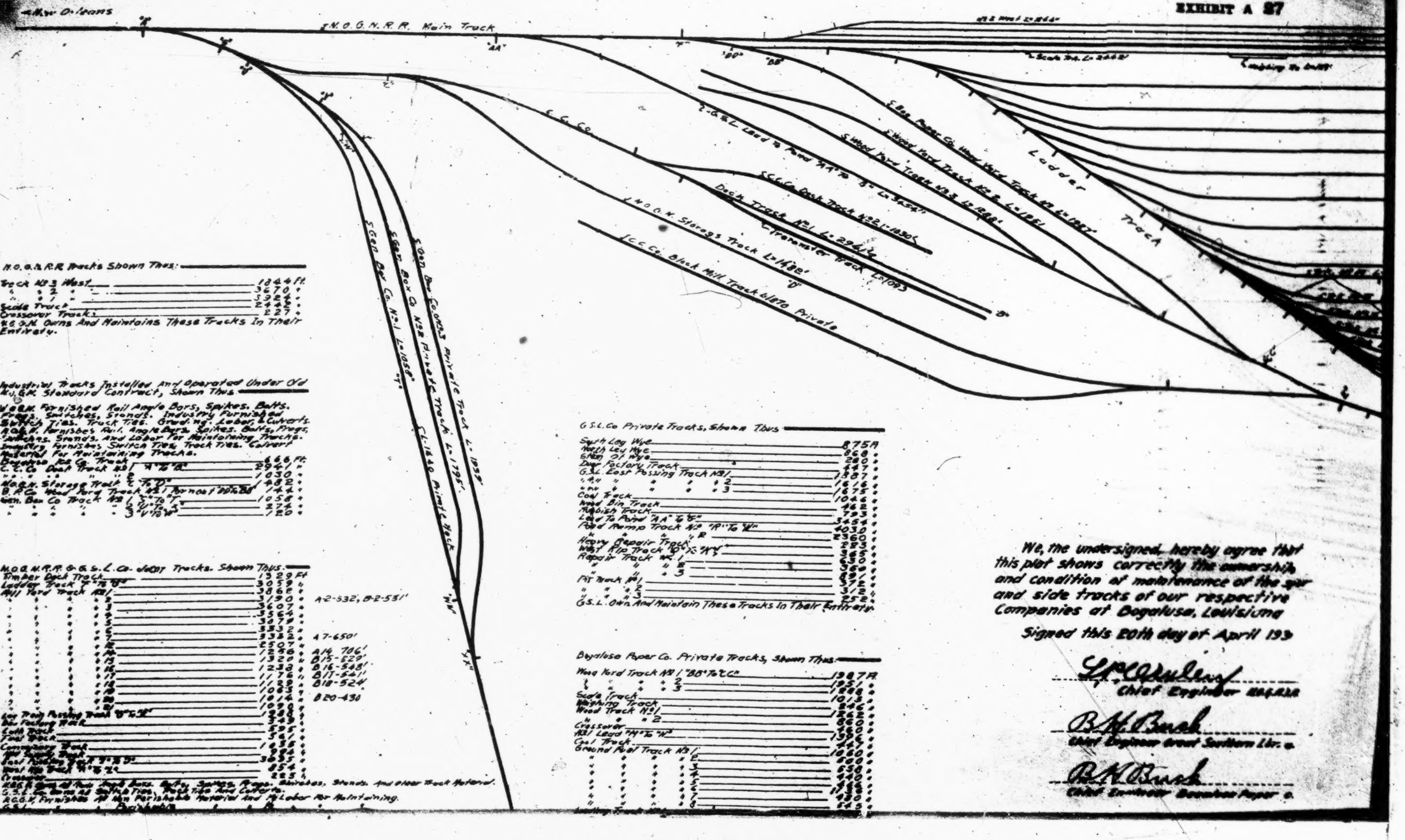




NOTE
CELOTEX PROPERTY
TOTAL ACREAGE - 143.89

	CELOTEX PLANT	
	THE CELOTEX COMPANY	
1939	DATE: OCT. 6 '39	1069-C
	SCALE: 1 - 200	
MAP REVISION	BY	

EXHIBIT A 87



K.N.O.G.N.R.R. Tracks Shown Thus: ———

Track Nº3 West	1844 Ft.
" " 2 "	3670 "
" " 1 "	5324 "
Scale Track	2442 "
Crossover Tracks	227 "

K.O.G.N. Owns And Maintains These Tracks In Their Entirety.

Industrial Tracks Installed And Operated Under Old K.O.G.N. Standard Contract, Shown Thus ———

K.O.G.N. Furnished Rail Angle Bars, Spikes, Bolts, Frogs, Switches, Stands. Industry Furnished Switch Ties. Track Ties. Grading. Labor & Culverts.

K.O.G.N. Furnishes Rail, Angle Bars, Spikes, Bolts, Frogs, Switches, Stands, And Labor For Maintaining Tracks. Industry Furnishes Switch Ties, Track Ties, Culvert Material For Maintaining Tracks.

Bayou Rouge Box Co Track "A" To "E"	668 Ft.
G.S.L. Co Dock Track Nº3	294 "
" " " " " 2	1030 "
" " " " " 1	482 "
K.O.G.N. Storage Track "C" To "D"	1058 "
B.R.Co Wood Yard Track Nº3 Turnout "BB"	144 "
Gen. Box Co Track Nº2 1/2 "C" To "F"	2742 "
" " " " " 3 "V" To "W"	120 "

K.O.G.N.R.R. & G.S.L.Co. Joint Tracks. Shown Thus: ———

Timber Dock Track	1329 Ft.
Ladder Track "A" To "B"	3059 "
Mill Yard Track Nº1	3190 " A-2-532', B-2-531'
" " " " 2	3607 "
" " " " 3	3564 "
" " " " 4	3479 "
" " " " 5	3332 " A 7-650'
" " " " 6	2507 "
" " " " 14	1256 " A14 706'
" " " " 15	1320 " B15-529'
" " " " 16	1233 " B16-548'
" " " " 17	1176 " B17-541'
" " " " 18	1229 " B18-524'
" " " " 19	1063 "
" " " " 20	1014 " B20-430
Log Deck Parking Road "B" To "E"	1090 "
Log Decking Road	3493 "
Cloth Track	5995 "
Final Track	5118 "
Conveyor Track	1356 "
Log Decking Road "A" To "B"	3055 "
Final Track "A" To "B"	954 "
Crossover	225 "

K.O.G.N. Furnished Rail Angle Bars, Bolts, Spikes, Frogs, Switches, Stands, And Other Track Material.
G.S.L. Furnished All Switch Ties, Track Ties And Culverts.
K.O.G.N. Furnishes All Non Perishable Material And All Labor For Maintaining.
G.S.L. " " " Perishable " " " " " "

G.S.L.Co Private Tracks, Shown Thus ———

South Leg Wye	875 Ft.
North Leg Wye	868 "
Stem Of Wye	280 "
Door Factory Track	447 "
G.S.L. East Passing Track Nº1	1387 "
" " " " " 2	1616 "
" " " " " 3	1675 "
Coal Track	1046 "
Wood Bin Track	462 "
Rubbish Track	793 "
Lead To Point "AA" To "E"	3454 "
Road Ramp Track Nº2 "R" To "W"	4030 "
" " " R	2360 "
Heavy Repair Track	283 "
Wet Rip Track "C" To "HH"	3665 "
Repair Track Nº1	650 "
" " " 2	360 "
" " " 3	891 "
Pit Track Nº1	371 "
" " " 2	372 "
" " " 3	252 "

G.S.L. Own And Maintain These Tracks In Their Entirety.

Bayou Rouge Paper Co. Private Tracks, Shown Thus ———

Wood Yard Track Nº1 "BB" To "CC"	1387 Ft.
" " " " 2	1355 "
" " " " 3	1869 "
Scale Track	1013 "
Weighing Track	246 "
Wood Track Nº1	1262 "
" " 2	860 "
Crossover	260 "
Nº1 Lead "H" To "K"	1396 "
Coal Track	441 "
Ground Rail Track Nº1	1060 "
" " " " 2	800 "
" " " " 3	650 "
" " " " 4	440 "
" " " " 5	330 "
" " " " 7	1130 "
" " " " 8	541 "
Loading Track	1795 "

We, the undersigned, hereby agree that this plat shows correctly the ownership and condition of maintenance of the spur and side tracks of our respective Companies at Bogalusa, Louisiana

Signed this 20th day of April 193

L. P. Gaulen
Chief Engineer K.O.G.N.R.R.

B. H. Burch
Chief Engineer Great Southern Lbr. Co.

B. H. Burch
Chief Engineer Bogalusa Paper Co.

EXHIBIT A 27

reby agree that
the ownership
ance of the spur
respective
. Louisiana
of April 193

lerk
ginder KCS&RR

k
f Southern Ldr. Co.

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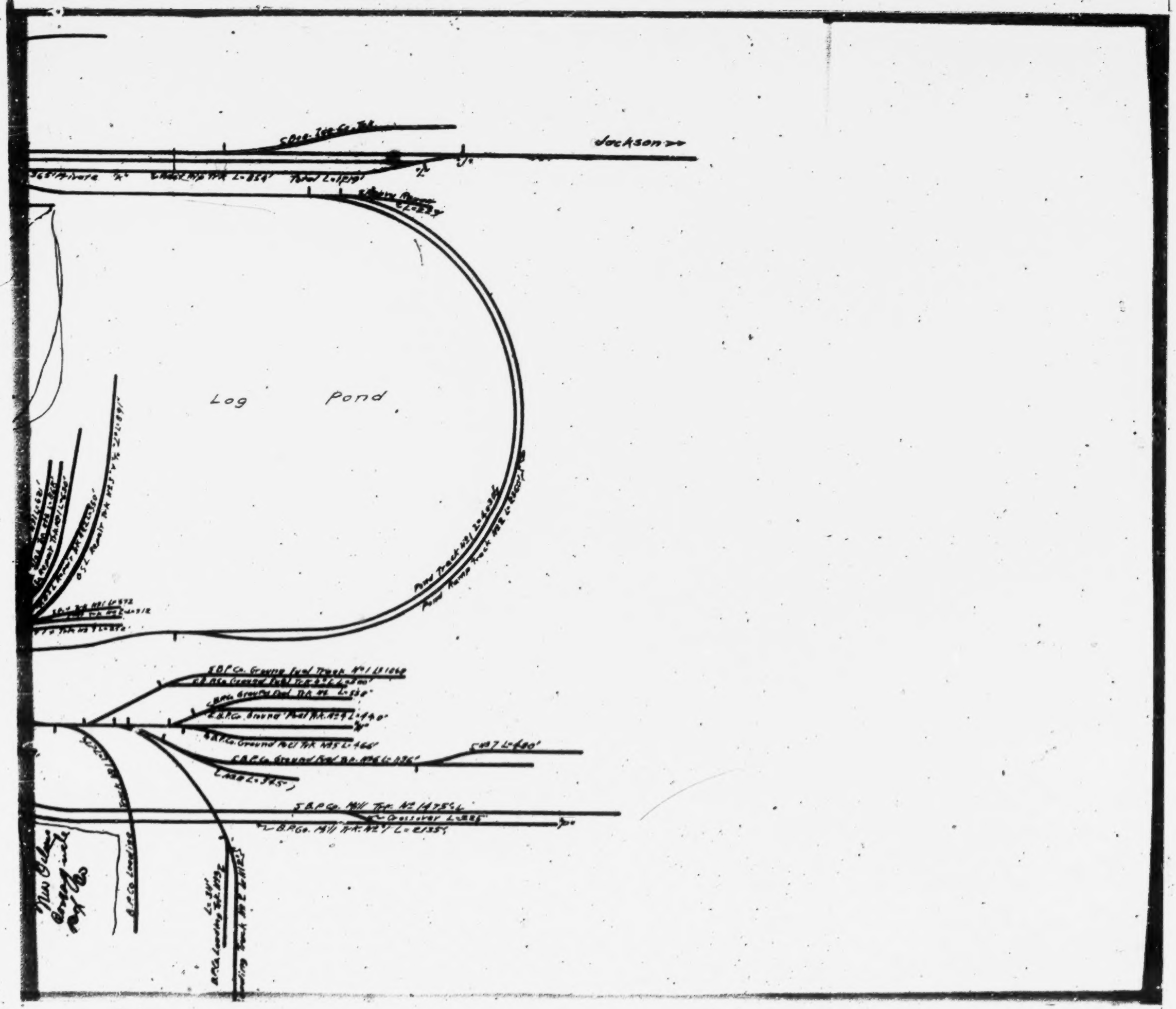
Log Pond

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PAGE

stance, at the Gulf plant, our main interchange with the Southern Pacific runs through the plant. The Gulf Company in handling its intraplant movements uses and crosses that track. There are parallel tracks along that connection and in handling the work together, they held up each other, that is in the past.

As to whether, for example, performing plant service for a shipper, to offset the compensation charged under a tariff—I think you would have to charge your tariff rate all the time, I don't
815 have any doubt but what that was done, but certainly you need cooperation in a place like that or you wouldn't get very far (p. 6167).

As to why we don't pay the actual cost of performing the switching—it was a bargain. The best bargain and we agreed on a price which they were willing to accept and we were willing to pay. The cost figures, if you look them over, rather indicate a fairly uniform cost. To begin with, it is a pretty good talking point to say that 90 cents is the allowance over at the Texas and 90 cents is the allowance over at the Gulf; now why should you pay more? On the other hand, the gentleman would say "Well, I should be paid as much," so that is to some extent the reason the uniform 90 cents applies. The mere fact that we established the allowance at 90 cents in one instance, was perhaps the main consideration in the other instance, as to what would be the proper allowance to one plant and what would be generally fair to the other. That is the way that trade was made. It wasn't based on a percentage below cost basis (p. 6171).

815–D *Exhibit A–28*

Statement of shipments of allied industries located at Bogalusa, La.

	1931		
	In	Out	Total
Great Southern Lumber Co.	152	6,256	6,408
Bogalusa Paper Company, Inc.	4,712	2,297	7,009
Bogalusa Turpentine Co.	9	135	144
New Orleans Corrugated Box Co.	86	1,368	1,454
	4,959	10,056	15,015

	January, February, March, 1932		
	In	Out	Total
Great Southern Lumber Co.	38	1,136	1,174
Bogalusa Paper Company, Inc.	1,584	640	2,224
Bogalusa Turpentine Co.		25	25
New Orleans Corrugated Box Co.	11	363	374
	1,633	2,164	3,797

NEW ORLEANS, LA., *May 2, 1932*

815-E

Exhibit A-129

Great Southern Lumber Company locomotive expense report

ENGINE NO. 8, MONTH OF JANUARY 1932

Date	Operating				Repairs and renewals				Daily total	Cars handled		Total	Cost per car
	Labor	Lubricants	M. & S.	Total	Labor	M. & S.	Total	Depreciation		Inbound	Outbound		
1	$22.41	$0.69	$0.23	$23.33	$1.54	.....	$1.54	$0.80	$25.67	10	35	45	$0.47
2	21.96	.09	.09	22.14	.....	.....	.....	.80	22.94	5	27	32	.717
3													
4	24.21	.09	.09	24.39	1.53	.....	1.53	.80	26.72	7	16	23	1.16
5	22.41	.89	.29	23.59	1.53	.....	1.53	.80	25.92	19	28	47	.55
6	21.96	.09	.13	22.18	1.53	0.43	1.96	.80	24.94	10	25	35	.71
7	22.41	.09	.11	22.61	1.14	1.27	2.41	.80	25.82	26	21	47	.55
8	21.96	.69	.27	22.92	1.54	.....	1.54	.80	25.26	10	30	40	.63
9	22.41	.09	.11	22.61	.....	.....	.....	.80	23.41	10	26	36	.65
10	18.60	.09	.11	18.80					18.80	37	0	37	.51
11	21.96	.89	.15	23.00	1.53	1.27	2.80	.80	26.60	4	22	26	1.02
12	22.41	.09	.16	22.66	1.53	.....	1.53	.80	24.99	21	26	47	.53
13	22.41	.09	.11	22.61	1.53	.....	1.53	.80	24.94	12	28	40	.623
14	21.96	.69	.27	22.92	1.53	.....	1.53	.80	25.25	13	31	44	.574
15	22.41	.09	.11	22.61	1.53	.....	1.53	.80	24.94	1	35	36	.69
16	21.96	.09	.11	22.16	.....	.....	.....	.80	22.96	16	24	40	.574
17													
18	24.21	.09	.11	24.41	1.53	.....	1.53	.80	26.74	26	29	55	.486
19	21.96	.09	.09	22.14	1.53	.....	1.53	.80	24.47	11	32	43	.568
20	22.41	.89	.25	23.55	1.53	.....	1.53	.80	25.88	17	28	45	.575
21	22.41	.69	.23	23.33	1.53	1.27	2.80	.80	26.93	35	33	68	.396
22	21.96	.09	.16	22.21	12.55	6.76	19.31	.80	42.32	21	25	46	.92
23	22.41	.09	.15	22.65	1.53	.....	1.53	.80	24.98	16	35	51	.49
24	20.28	.09	.16	20.53					20.53	24	2	26	.79
25	22.41	.59	.27	23.27	1.53	2.27	3.80	.80	27.87	13	22	35	.796
26	21.96	.89	.30	23.15	1.53	.....	1.53	.80	25.48	20	31	51	.50
27	22.41	.09	.11	22.61	1.53	.....	1.53	.80	24.94	3	29	32	.78
28	21.96	.09	.13	22.18	1.53	.....	1.53	.80	24.51	22	33	55	.446
29	22.41	.89	.29	23.59	1.53	.....	1.53	.80	25.92	17	40	57	.455
30	21.96	.09	.13	22.18	.....	.....	.....	.80	22.98	12	35	47	.49
31	20.73	.09	.11	20.93	.....	.....	.....		20.93	17	6	23	.91
	640.92	9.51	4.83	655.26	44.31	13.27	57.58	20.80	733.64	455	754	1,209	.607
Coal received 1-13-32, N. O. G. N. #12162, 55.85 tons @ 4.70 per ton									262.80				
Coal received 1-26-32, N. O. G. N. #12184, 55.50 tons @ 4.70 per ton									260.85				
Plus 10¢ per ton for handling									11.14				
									1,268.13				

45.00 tons of coal on hand 2-1-32.

Material and supplies furnished engine No. 8, month of January 1932

Date	Article	Price	Amount
1-1	1 lb. pressure grease	$0.09	$0.09
1-1	2 gals. valve oil	.30	.60
1-1	2 lbs. waste	.07	.14
1-1	275 lbs. sand	.0033	.09
1-2	1 lb. pressure grease	.09	.09
1-2	275 lbs. sand	.0033	.09
1-4	1 lb. pressure grease	.09	.09
1-4	275 lbs. sand	.0033	.09
1-5	1 lb. pressure grease	.09	.09
1-5	2 gals. valve oil	.30	.60
1-5	2 gals. black oil	.10	.20
1-5	2 lbs. waste	.07	.14
1-6	440 lbs. sand	.0033	.15
1-6	1 lb. pressure grease	.09	.09
1-6	385 lbs. sand	.0033	.13
1-6	1 set 1¼ valve stem piston packing	.43	.43

Material and Supplies furnished engine No. 8, month of January 1932—Continued

Date	Article	Price	Amount
1-7	1 lb. pressure grease	.09	.09
1-7	330 lbs. sand	.0033	.11
1-7	BE-257 driver brake shoe	1.37	1.37
1-8	1 lb. pressure grease	.09	.09
1-8	2 gals. valve oil	.30	.60
1-8	2 lbs. waste	.07	.14
1-8	385 lbs. sand	.0033	.13
1-9	1 lb. pressure grease	.09	.09
1-9	330 lbs. sand	.0033	.11
1-10	1 lb. pressure grease	.09	.09
1-10	330 lbs. sand	.0033	.11
1-11	1 lb. pressure grease	.09	.09
1-11	2 gal. valve oil	.30	.60
1-11	2 gal. black oil	.10	.20
1-11	1 BE-257 driver brake shoe	1.27	1.27
1-11	440 lbs. sand	.0033	.15
1-12	1 lb. pressure grease	.09	.09
1-12	495 lbs. sand	.0033	.16
1-13	1 lb. pressure grease	.09	.09
1-13	330 lbs. sand	.0033	.11
1-14	1 lb. pressure grease	.09	.09
1-14	2 gal. valve oil	.30	.60
1-14	2 lbs. waste	.07	.14
1-14	385 lbs. sand	.0033	.13
1-15	1 lb. pressure grease	.09	.09
1-15	330 lbs. sand	.0033	.11
1-16	1 lb. pressure grease	.09	.09
1-16	330 lbs. sand	.0033	.11
1-18	1 lb. pressure grease	.09	.09
1-18	330 lbs. sand	.0033	.11
1-19	1 lb. pressure grease	.09	.09
1-19	275 lbs. sand	.0033	.09
1-20	1 lb. pressure grease	.09	.09
1-20	2 gals. valve oil	.30	.60
1-20	2 lbs. waste	.07	.14
1-20	330 lbs. sand	.0033	.11
1-20	2 gals. black oil	.10	.20
1-21	1 lb. pressure grease	.09	.09
1-21	2 gals. valve oil	.30	.60
1-21	2 lbs. waste	.07	.14
1-21	275 lbs. sand	.0033	.09
1-21	1 BE-257 driver brake shoe	1.27	1.27
1-22	1 lb. pressure grease	.09	.09
1-22	495 lbs. sand	.0033	.16
1-22	4 M-20 arch bricks	.835	3.30
1-22	2 S-80 arch bricks	.6685	1.34
1-22	2 S-120 arch bricks	.404	.80
1-22	2 S-140 arch bricks	.546	1.09
1-22	2 S-40 arch bricks	.114	.23
1-23	1 lb. pressure grease	.09	.09
1-23	440 lbs. sand	.0033	.15
1-24	1 lb. pressure grease	.09	.09
1-24	495 lbs. sand	.0033	.16
1-25	1 lb. pressure grease	.09	.09
1-25	1 gal. signal oil	.50	.50
1-25	2 lbs. waste	.07	.14
1-25	385 lbs. sand	.0033	.13
1-25	1 BE-257 driver brake shoe	1.27	1.27
1-25	2 car brake shoes	.50	1.00
1-26	1 lb. pressure grease	.09	.09
1-26	2 gals. valve oil	.30	.60
1-26	2 gals. black oil	.10	.20
1-26	2 lbs. waste	.07	.14
1-26	495 lbs. sand	.0033	.16
1-27	1 lb. pressure grease	.09	.09
1-27	330 lbs. sand	.0033	.11
1-28	1 lb. pressure grease	.09	.09
1-28	385 lbs. sand	.0033	.13
1-29	1 lb. pressure grease	.09	.09
1-29	2 gals. valve oil	.30	.60
1-29	2 gals. black oil	.10	.20
1-29	2 lbs. waste	.07	.14
1-29	440 lbs. sand	.0033	.15
1-30	1 lb. pressure grease	.09	.09
1-30	385 lbs. sand	.0033	.13
1-31	1 lb. pressure grease	.09	.09
1-31	330 lbs. sand	.0033	.11
	Total		37.62

Crossover ———————— 285 Ft.
K.O.&G. Owns All Rails Angle Bars, Bolts, Spikes, Frogs, Switches,
G.S.L. Co. Owns All Switch Ties, Track Ties And Culverts.
K.O.&G., Furnishes All Non Perishable Material And No Labor For
G.S.L. " " Perishable " " R " "

General Box Co Private Tracks. Shown Thus ▬▬▬

G.B.Co Track #1 "T" To "TT" ———————— 1440 Ft.
" " " " #2 "W" To "WW" ———————— 1795 "
" " " " #3 "X" To "XX" ———————— 1939 "
G.B.Co Owns And Maintains These Tracks In Their Entirety.

Stands. And Other Track Material.

Maintaining.

" "
" "
" "
" "
Leading Track
" "
" "
Mill Track No 1
" " " 2.
Crossover ___
Slab Trk No 2
B.P.Co. Trk. ___
Slab Track No 1
B.P.Co. Owns And

Colonial Creoso

Fanster Track
No. 3 N. Storage
Black Mill Trac
Colonial Creo. Co

———— 440 "

" " 5 ———— 466 "

" " 6 ———— 1136 "

" " 7 ———— 480 "

" " 8 ———— 545 "

31 ———— 727 "

" 2 ———— 1115 "

" 3 ———— 311 "

"O" To "P" ———— 2135 "

———— 1475 "

———— 225 "

B.P.Co. ———— 868 "

———— 200 "

B.P.Co ———— 521 "

Maintains These Tracks In Their Entirety.

ating Co Private Track. Shown Thus: ▬

———— 1093 Ft.

Track "D" To "E" ———— 1845 "

———— 1870 "

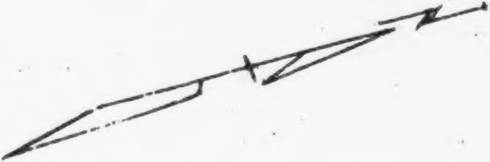
o. Owns And Maintains These Tracks In Their Entirety

Chief Engineer Bogalusa Paper Co.

H O Busch

f Engineer Bogalusa Paper Co.

Return to
L. Oandely
Boyertown.
Pa



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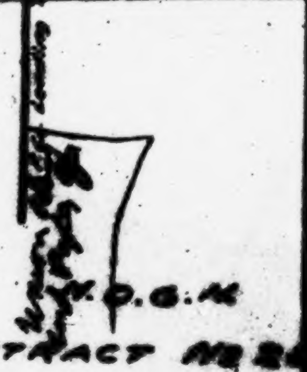
W. O. G. M.
TRACT NO. 2

D.G.N.

T No 2829

[redacted]

117

Operating labor for engine No. 8, month of January 1932

	Days	Hours per day	Total hours	Rate	Amount
Engineer	29	12	344	$0.47	$161.68
Fireman	29	12	344	.26	89.44
Engine foreman	29	12	344	.43	147.92
Brakeman	29	12	344	.26	89.44
Brakeman	29	12	344	.26	89.44
Hostler	31	4½	140	.45	63.00
Total					640.92

Repairs and renewals labor for engine No. 8, month of January 1932

	Hours worked	Rate	Amount
Engine helper	41⅓	$0.31½	$13.08
Engine helper	4	.41⅓	1.66
Boiler maker	45⅓	.45	20.48
Machinist	14	.49⅓	6.93
Machinist	4	.54	2.16
Total			44.31

815–H *Exhibit A–36*

Letters denote railroad spots

"A" Kerosene loading rack.
"B" Blue gas loading rack.
"C" White gas loading rack.
"D" Ethyl gas loading rack.
"E" Aviation gas loading rack.
"F" Lube oil and grease loading and unloading rack.
"G" Empty drum unloading point.
"H" Drum loading and unloading point.
"I" Locomotive shed (2 tracks).
"J" Asphalt, fuel oil, and gas oil loading rack (2 tracks).
"K" Drum loading rack.
"L" Asphalt and gas oil loading rack.
"M" Empty drum loading.
"N" Tank car cleaning track.
"O" Car repairing (2 tracks).
"P" Casinghead gasoline unloading rack.
"Q" Freight unloading track.
"R" Interchange (2 tracks).
"S" Crude unloading tracks (2 tracks).
"T" Shell unloading.
"U" Gravel and sand unloading.

3.48 miles of track in refinery proper. Weight of rail as shown on photostat.

815–K *Exhibit A–39*

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY

TRAFFIC AGREEMENT

June 1, 1916

This Agreement, made and entered into this first day of June A. D. one thousand nine hundred and sixteen, by and between The Yazoo & Mississippi Valley Railroad Company, in possession of and oper-

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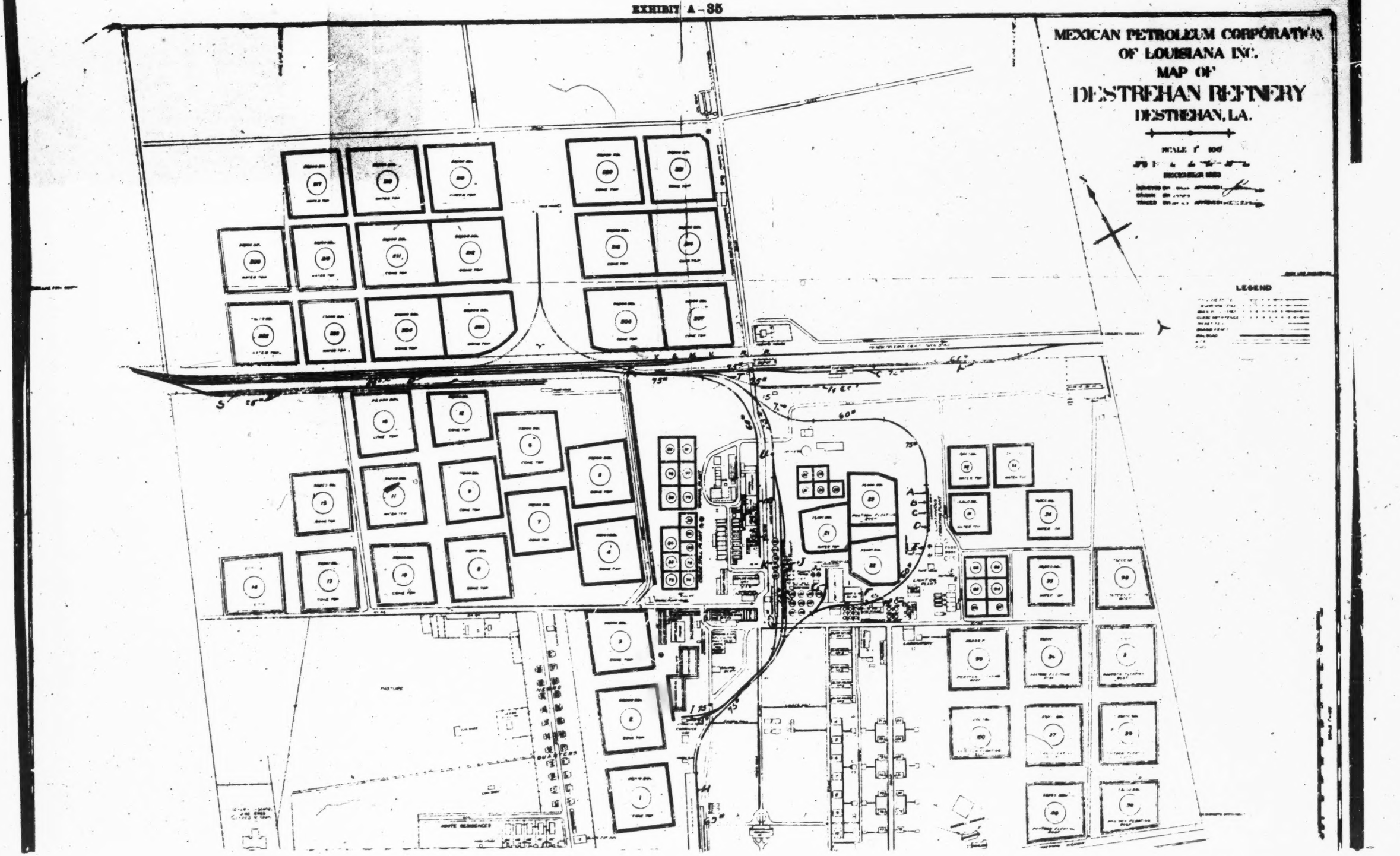
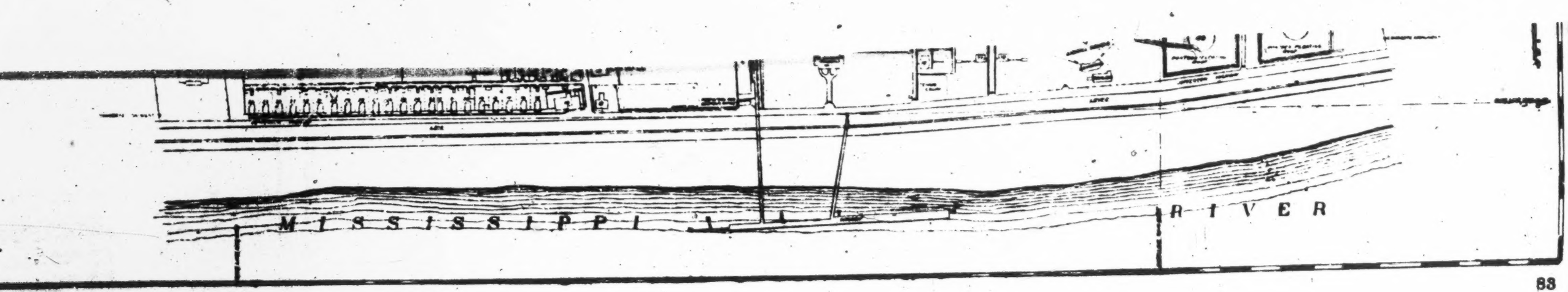
EXHIBIT A-35

MEXICAN PETROLEUM CORPORATION
OF LOUISIANA INC.
MAP OF
DESTREHAN REFINERY
DESTREHAN, LA.




MISSISSIPPI
RIVER

Rock quarry

LOUISIANA DEVELOPMENT CO
SALT MINE DIVISION

Location Plan Of Mine Site
And Vicinity

WINNFIELD LOUISIANA
WINN PARISH
August 3, 1951

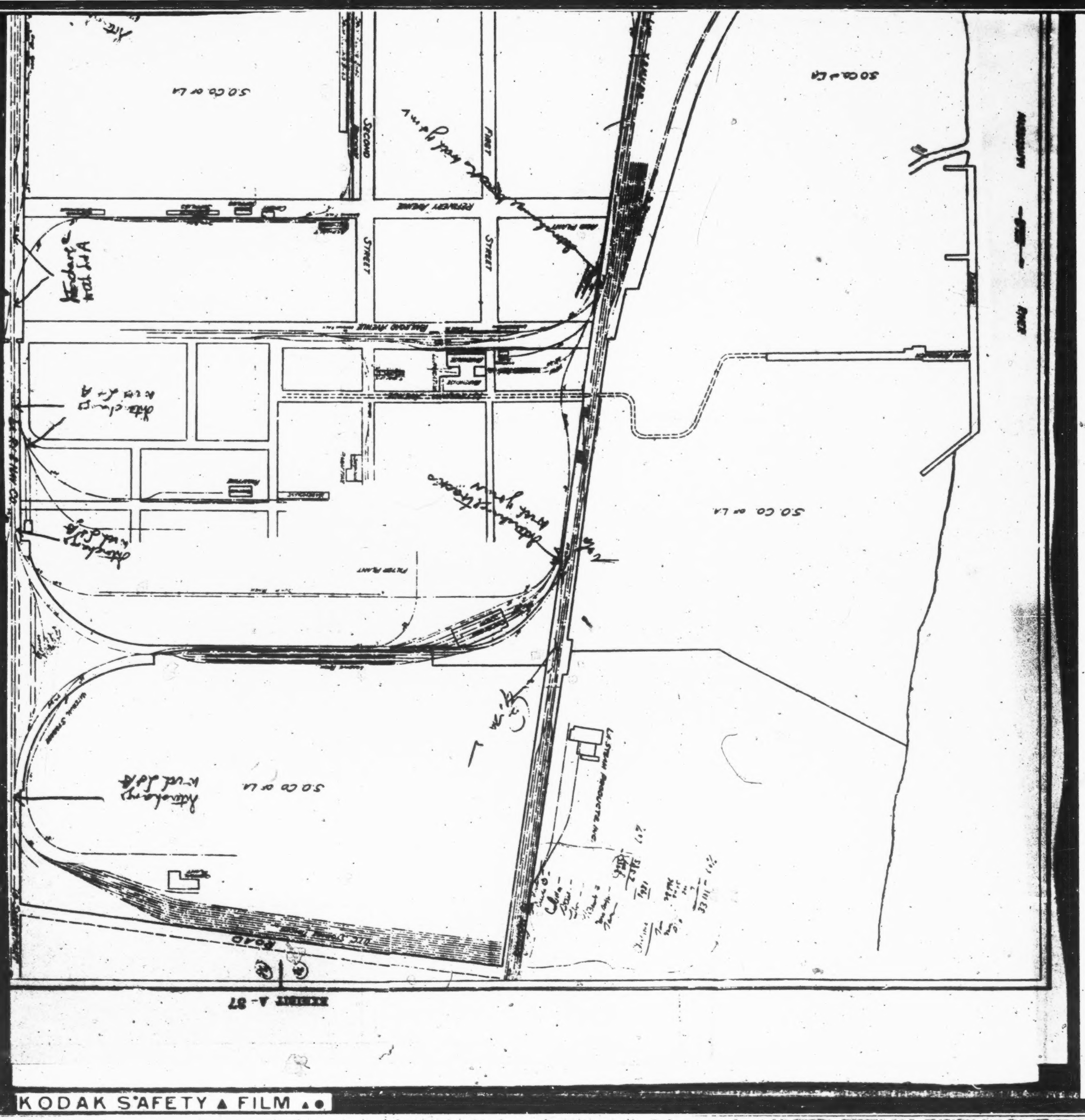
Scale 1" = 800'

File R-6

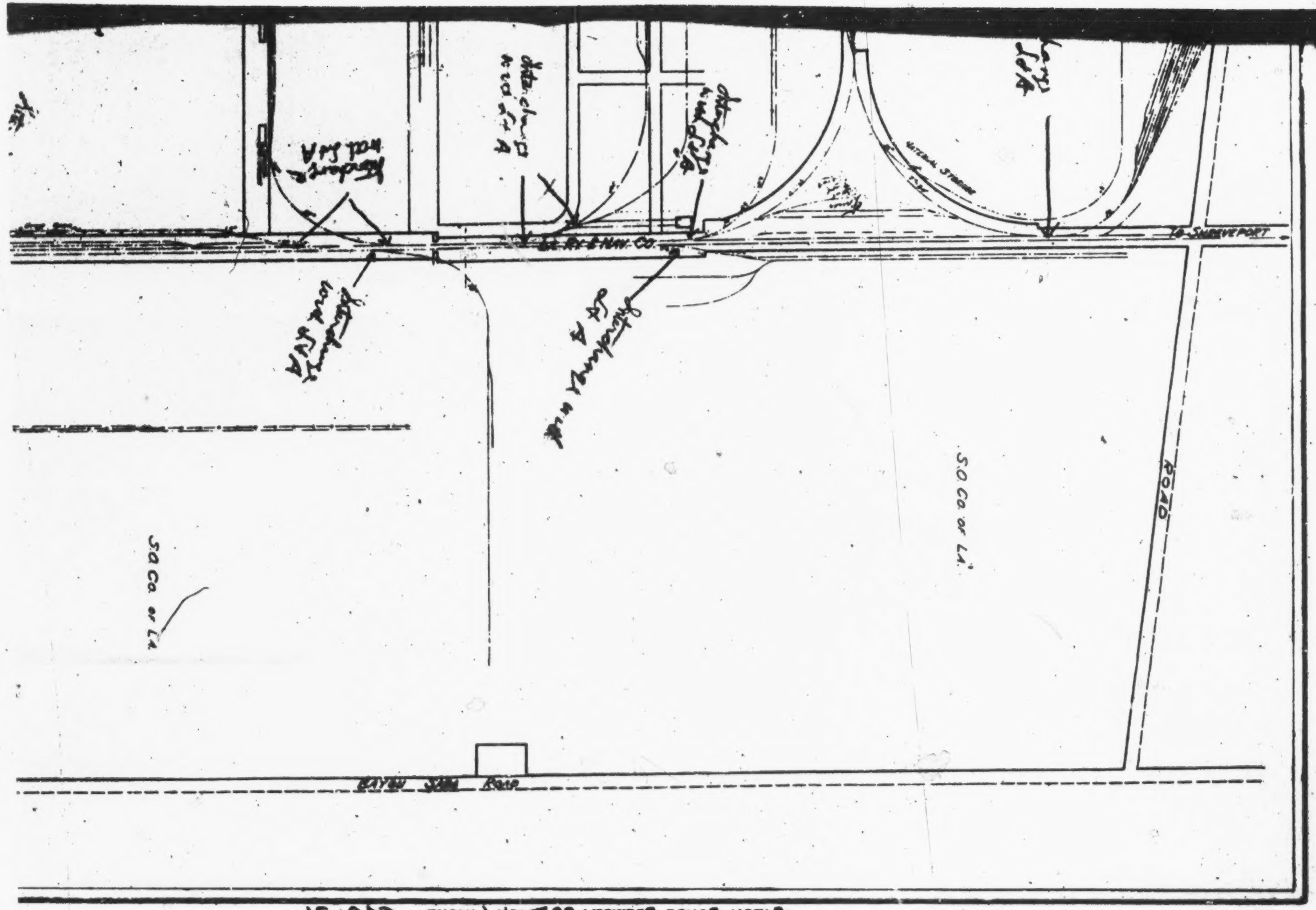
Surveyed by
D.E. Walker, Engr.
Jeffreys, Draftsman

Note: Lateral Lines Run By Original
U.S. Govt Notes

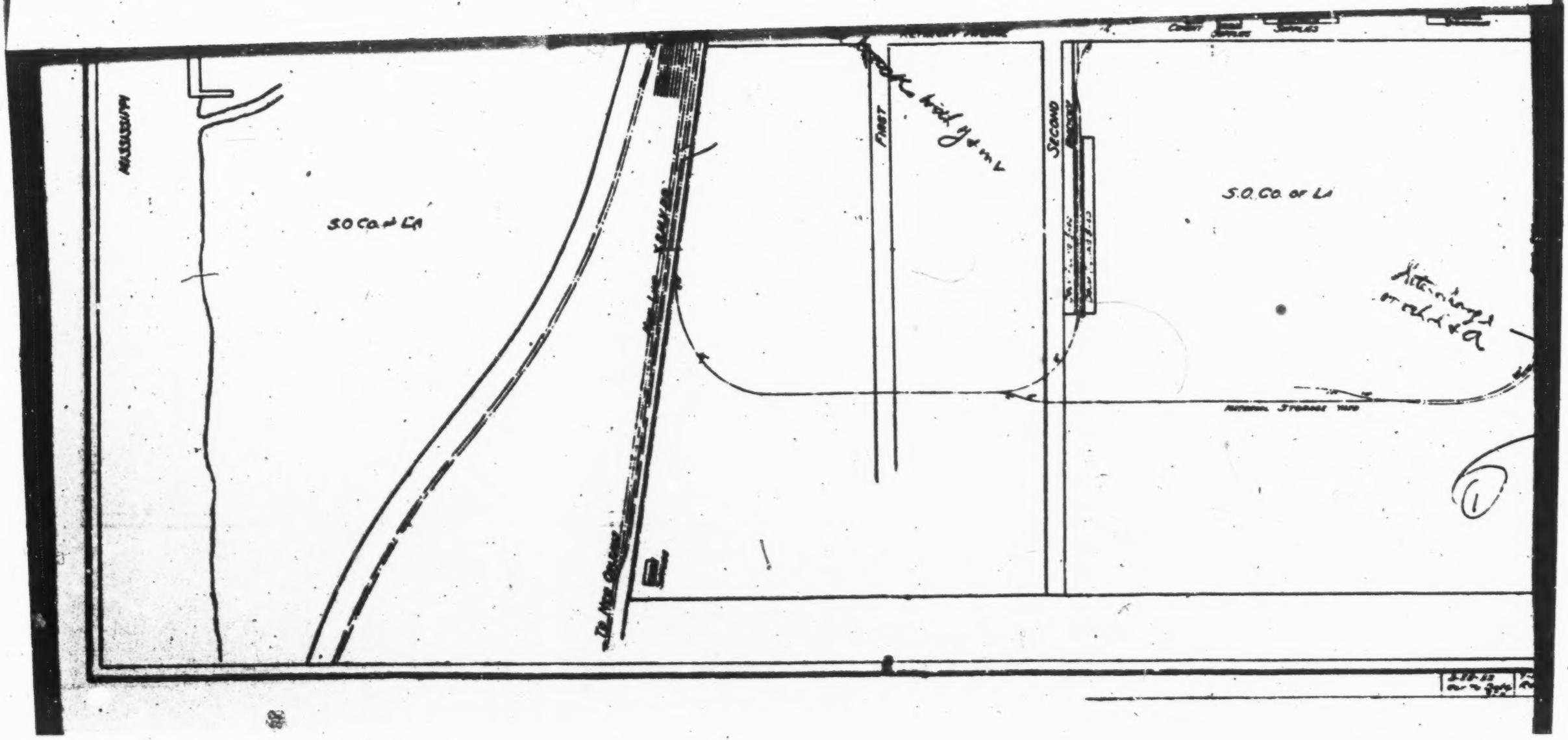
E & A 35



KODAK SAFETY ▲ FILM ▲●



BATON ROUGE REFINERY PP TRUCK LAYOUT 650-51


MISSISSIPPI
S.O.Co of La
S.O.Co of La
FIRST
SECOND
(1)

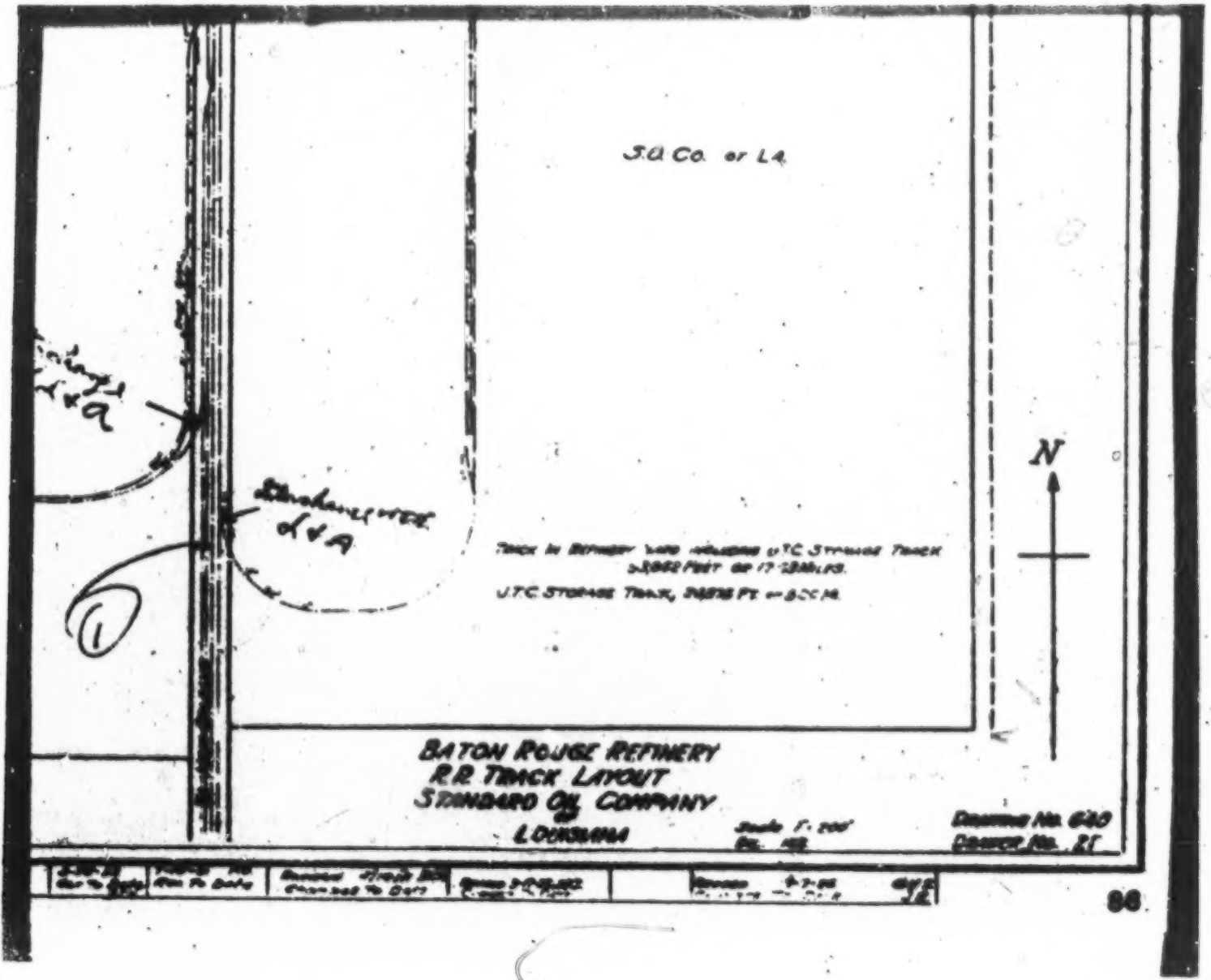
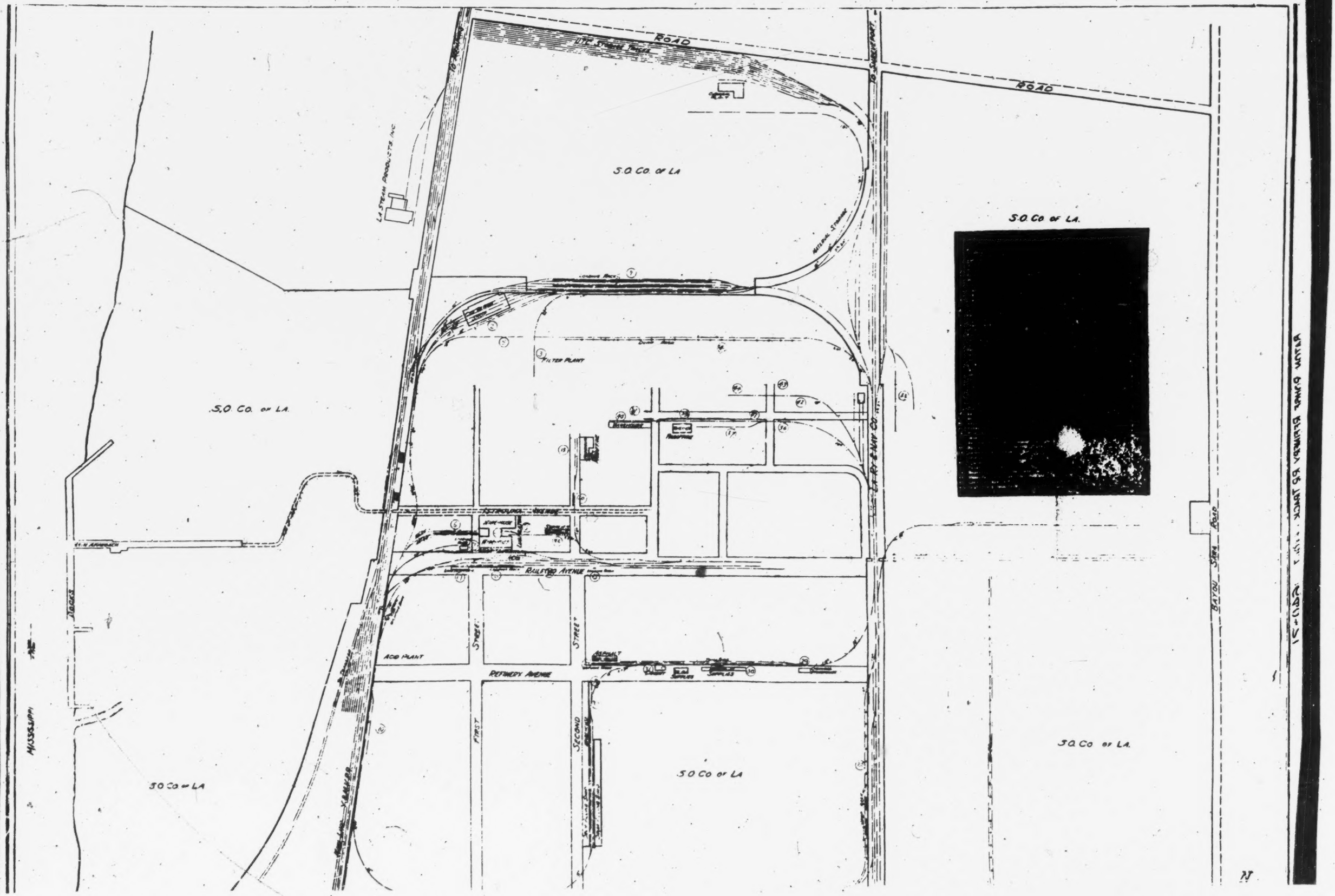
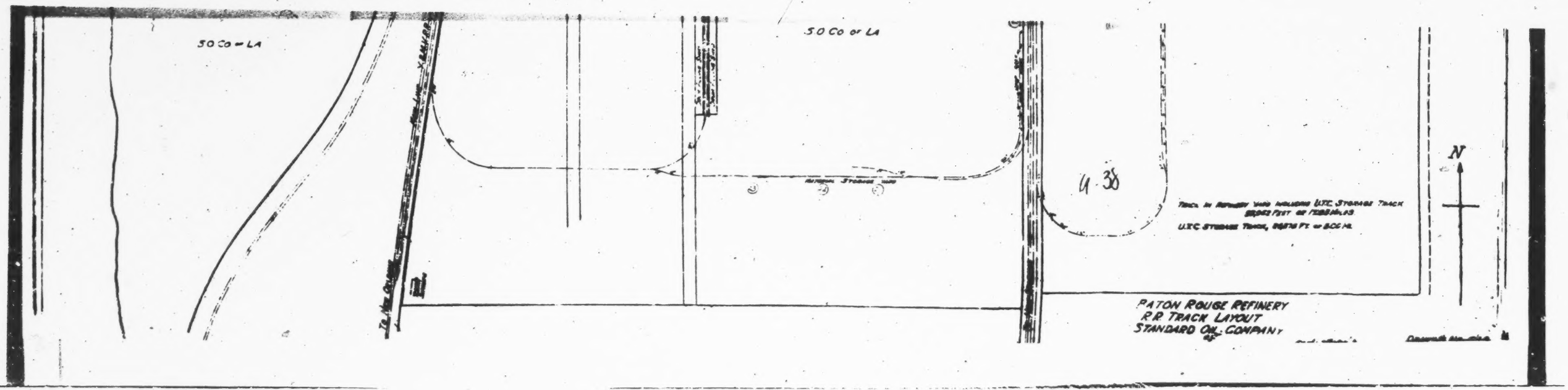

S.O. Co. of La.
N
BATON ROUGE REFINERY
R.R. TRACK LAYOUT
STANDARD OIL COMPANY
LOUISIANA

EXHIBIT A-38


ROAD
ROAD
S.O. CO. OF LA.
S.O. CO. OF LA.
S.O. CO. OF LA.
S.O. CO. OF LA.
S.O. CO. OF LA.
S.O. CO. OF LA.
LA STEAM PRODUCTS INC
NATURAL STORAGE
FILTER PLANT
RAILROAD AVENUE
ACID PLANT
PETWAY AVENUE
FIRST STREET
SECOND STREET
BAYOU SARA ROAD
MISSISSIPPI
N


SO CO - LA
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BATON ROUGE REFINERY
R.R. TRACK LAYOUT
STANDARD OIL COMPANY

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ating a line of railroad between North Baton Rouge, La., and New Orleans, La., including terminal facilities at New Orleans hereinafter called the "Valley Company," party of the first part; Illinois Central Railroad Company, for itself and as lessee of the Chicago, St. Louis & New Orleans Railroad Company, in possession of and operating a line of railroad between Kenner, La., and New Orleans, La., including terminal facilities at New Orleans, hereinafter called the "Central Company," party of the second part; and New Orleans, Texas & Mexico Railway Company, in possession of and operating a line of railroad between Sabine River (on the Texas-Louisiana boundary line) and Anchorage, La., with branches between Eunice, La., and Crowley, La., and between Erwinville, La., and Nix, La., together with a boat transfer across the Mississippi River between Anchorage, La., and the East Bank of the Mississippi River opposite North Baton Rouge, hereinafter called the "New Orleans Company," party of the third part, Witnesseth:

Whereas, The Valley Company and the Central Company desire to control, jointly with their own business, to and from New Orleans, the Freight, Passenger, Mail and Express traffic of the New Orleans Company; and

Whereas, the New Orleans Company desires to concentrate its New Orleans Freight, Passenger, Mail and Express traffic upon the lines of the Valley and Central Companies.

Now, Therefore, in consideration of the New Orleans Company, handling all of its New Orleans Freight, Passenger, Mail and Express traffic in both directions in connection with the Valley and Central Companies, and other considerations the Valley and Central Companies covenant and agree as follows:

Freight Traffic

I. That the New Orleans Company shall continue to exercise the same initial rights in the making and publishing of rates from, to and through New Orleans, and the establishment of charges, privileges, facilities, rules and regulations at New Orleans that it has heretofore enjoyed and the same as railroads terminating at New Orleans exercise.

II. The Valley and Central Companies covenant and agree that they will promptly, and without preference to their own traffic, transport and handle and effect delivery and receipt, at their own expense, with their own motive power and crews and other forces, of all the freight traffic of the New Orleans Company between the North Baton Rouge interchange yards and the freight stations team tracks, industry tracks, grain elevators, wharves, storage warehouses, etc., interchange tracks with connecting lines, including the Public Belt (so called) and the New Orleans Terminal Company, and all other facilities of the Valley Company and the Central Company situated in New Orleans, La., as also the plant of the American Sugar Refining

Company at Chalmette, La., and industries located on the New Orleans Terminal Company's tracks to which the Valley and Central Companies now have access.

The Valley and Central Companies further covenant and agree that they will promptly move free of charge such empty freight cars in either direction between the interchange yards at North Baton Rouge and New Orleans as may be required by the New Orleans Company in the ordinary handling of its business and to maintain the identity of such empty freight cars when so desired by the New Orleans Company; provided, however, that all cars shall be handled in accordance with the rules from time to time of the American Railway Association, or other similar authority regulating the movement of cars as between the railroads of the country.

III. The Valley and Central Companies further covenant and agree that their freight station, team tracks, industry tracks, grain elevators, wharves, storage warehouses, and all other facilities referred to in the proceeding paragraph, including the facilities serving the plant of the American Sugar Refining Company at Chalmette and serving industries located on the New Orleans Terminal Company tracks to which the Valley and Central Companies now have access and also their interchange tracks with connecting lines at New Orleans shall for the purposes of this contract and handling of the freight traffic involved be also used for the freight traffic of the New Orleans Company.

IV. The Valley and Central Companies further covenant and agree that in the delivery and receipt of freight at New Orleans and in the transportation thereof the forms of bills of lading, waybills, expense bills, and other forms prescribed and furnished by the New Orleans Company, shall be used in the New Orleans business of the New Orleans Company.

V. Each of the parties hereto further covenant and agree to be responsible for all loss and damage to equipment and contents of cars occurring while said equipment and traffic is in their possession respectively, and to assume all liability therefor. Concealed losses shall be settled for in accordance with the Freight Claim Rules and other regulations from time to time customary between railroad companies.

VI. The Valley and Central Companies further covenant and agree that freight equipment, loaded and empty, shall be interchanged with the New Orleans Company at the North Baton Rouge interchange yards under M. C. B. Rules from time to time in effect that no loaded cars shall be rejected by either Company for reasons other than safety appliance defects. All cars handled by the Valley and Central Companies for account of the New Orleans Company whether loaded or empty, shall be accounted for both as to rental and maintenance under the established and generally accepted rules in vogue among common carriers, it being understood that when the Valley Company places loaded or empty cars on the North Baton Rouge interchange

tracks, delivery has been made to the New Orleans Company and when such cars are placed on said interchange tracks by the New Orleans Company or by switch engines of the Valley Company acting for the New Orleans Company, delivery has been made to the Valley Company.

VII. The Valley and Central Companies further covenant and agree to render such switching service between the incline on the east bank of the Mississippi River and North Baton Rouge interchange yards as may be required by the boat service rendered by the New Orleans Company. The movement of the traffic between the North Baton Rouge interchange yards and New Orleans shall in the ordinary course be accomplished under such schedules as to arrive at and leave New Orleans at such hours as may be reasonably required by the New Orleans Company.

VIII. The term "New Orleans, La.," employed in this contract includes all facilities situated within the port limits of New Orleans.

IX. The Valley and Central Companies further covenant and agree that, for the services to be rendered, the facilities to be furnished, and the liabilities to be assumed as set forth in Section 2, 3, 4, 5, and 6, they will accept as their compensation in full a sum equivalent to forty-six and six one-hundredths per cent (46.06%) of the total revenue accruing to the entire line between Sabine River and New Orleans, La., on all through freight handled under this agreement moving from, to, or through New Orleans. It is expressly understood and agreed that on the Freight traffic covered by this Contract the basis of divisions employed in arriving at the revenue of the line between Sabine River and New Orleans, and controlled lines west of Sabine River and which yielded the line between Sabine River and New Orleans on said traffic $694,385.36 during the calendar year 1915, is the basis on which the percentage forty-six and six one-hundredths per cent (46.06%) accepted by the Valley and Central Companies as hereinabove specified, is fixed, and that on said traffic the basis of divisions allotted to the lines west of Sabine River shall not be increased at the expense of the line east of Sabine River during the continuance of this agreement.

It is understood that incidental terminal expenses at New Orleans on the New Orleans Company's business, namely, loading and unloading charges on import, export and coastwise freight, and switching charges assessed by connecting lines on business to and from industries, etc., on such connecting lines, shall be assumed by the New Orleans Company when such charges are absorbed by the rail carriers.

X. The Valley and Central Companies covenant and agree to perform the switching services between the incline on the east bank of the Mississippi River and the North Baton Rouge interchange yards, as provided in the first part of Section VII, and to charge for such switching service fifty cents for each loaded car, no charge to be made for switching empty cars.

XI. The Valley and Central Companies grant to the New Orleans Company the right to solicit freight traffic from and to Baton Rouge, La., originating at or destined to points on or reached by the New Orleans Company or its connections via junctions west of the Mississippi River, and the Valley and Central Companies covenant and agree that for the service of handling said freight traffic between Baton Rouge and the New Orleans Company's transfer boat at the east bank of the Mississippi River it will accept Two Dollars and Fifty Cents ($2.50) per car loaded or empty, and Forty Cents (40¢) per ton for handling freight at the freight house at Baton Rouge, and for the purposes of this traffic, the freight station, team tracks, and other facilities at Baton Rouge, and the station agent, clerical, and other forces, shall be employed to handle the business.

In consideration of the low switching rate and the low handling charge hereinabove specified, the New Orleans Company assumes the risk of loss and damage to freight while handled through the freight house and while being switched to and from the transfer boat. Per Diem accruing on cars while engaged in this business shall be assumed by the New Orleans Company.

XII. The Valley and Central Companies grant to the New Orleans Company the right to solicit freight traffic from and to the Standard Oil Company plant and other industries situated at North Baton Rouge, when originating at or destined to point on or reached by the New Orleans Company or its connections via junctions west of the Mississippi River and the Valley and Central Companies covenant and agree to accept for the handling of such traffic between North Baton Rouge and the New Orleans Company's transfer boat at the incline on the east bank of the Mississippi River, a switching charge of Two Dollars and Fifty Cents ($2.50) per car, loaded or empty, and Forty Cents (40¢) per ton for handling freight at the freight house at Baton Rouge, and for the purposes of this traffic the freight station, team tracks, and other facilities at North Baton Rouge, and the station agent, clerical, and other forces shall be employed to handle the business.

In consideration of the low switching rate and the low handling charge hereinabove specified, the New Orleans Company assumes the risk of loss and damage to freight while handled through the freight house and while being switched to and from the transfer boat. Per Diem accruing on cars while engaged in this business shall be assumed by the New Orleans Company.

XIII. The Valley and Central Companies having agreed that the New Orleans Company shall exercise initial rights at New Orleans as provided in Section I, nothing in this agreement contained shall be construed as making it incumbent upon the Valley and Central Companies to solicit or other wise influence to the New Orleans Company freight traffic to and from New Orleans, but is *is* distinctly understood and agreed that the Valley and Central Companies in the handling of the freight traffic of the New Orleans Company

shall not discriminate as between it and other freight traffic the Valley and Central Companies handle, but shall treat the New Orleans Company's freight traffic with the same despatch and care and in all other respects the same as other freight traffic the Valley and Central Companies handled, including their own.

Passenger Traffic

XIV. The New Orleans Company shall exercise the same initial rights in the making and publishing of passenger rates from, to and through New Orleans and the establishment of charges, privileges, facilities, rules, and regulations at that point that are exercised by railroads terminating at New Orleans.

The New Orleans Company will, at its own expense, furnish the agent of the Central Company at New Orleans, La., a full supply of passenger tickets, in form acceptable to the Central and Valley Companies to be used in connection with the passenger traffic going to the lines of the New Orleans Company.

XV. The Central and Valley Companies shall furnish without charge therefor, all necessary depot accommodations and yard room at New Orleans and Baton Rouge, and at intermediate points for all the passenger traffic, mail, and express coming from or going to the line of the New Orleans Company, and do all things necessary to properly conduct over their respective lines the business of the New Orleans Company.

XVI. The Station Agents, Baggage Masters, and other station employes of the Central and Valley Companies at New Orleans and Baton Rouge, in so far as the passenger service herein contemplated, are to be considered joint employes of the parties hereto, and shall do all things necessary to properly conduct the business of the New Orleans Company in a manner satisfactory to the parties hereto.

XVII. The passenger trains of the New Orleans Company shall be run between New Orleans and Baton Rouge, in both directions, as through trains, and the running time, to be agreed upon by the parties hereto, shall be such as is required for a first class through passenger line in competition with other routes.

XVIII. It is agreed that the New Orleans Company shall furnished and keep in good repair, all the passenger equipment for the line, free of mileage or other charge for the use thereof. Such ordinary running repairs as it may be necessary to perform to the passenger cars of the New Orleans Company, while on the lines of the Central and Valley Companies, shall be performed by the Central or Valley Company at the cost and expense of the New Orleans Company.

XIX. The conductors and Trainmen (except Engineers and Firemen) of the New Orleans Company, employed on the passenger trains, shall run between New Orleans and Baton Rouge, and shall be considered and treated as employes of the Central and Valley

Companies while on the lines of the Central and Valley Companies between New Orleans and the Incline of the Valley Company on the river front at Baton Rouge, and shall be considered employes of the New Orleans Company while running on its tracks and while on the transfer boat. The wages of Conductors and Trainmen, however, shall be borne and paid by the New Orleans Company.

XX. It is agreed that the engine service, engineers and firemen, for moving the trains of the New Orleans Company between New Orleans and the Incline of the Valley Company of the river front at Baton Rouge, shall be furnished by the Central and Valley Companies, and the expense thereof, including wages of Engineers and Firemen, shall be borne and paid for by the Central and Valley Companies.

XXI. All passenger equipment used in the through service between New Orleans, La., and Houston, Texas, shall be properly supplied with ice, water, lighting, and all other necessary supplies, either by the Central and Valley Companies at New Orleans, or by the New Orleans Company at points between Anchorage and the Sabine River, or at Beaumont and Houston, Texas, by the Beaumont, Sour Lake & Western Railway, and the expense thereof in all instances shall be prorated by the lines herein named on a mileage basis. The expense in connection with cleaning the outside of Pullman cars at New Orleans and the cleaning at all points of the inside and outside of dining and other cars running in the line between New Orleans and Houston, shall be prorated on a mileage basis between the lines constituting the through line between New Orleans and Houston.

XXII. All passenger earnings, including passenger, mail, express, and other passenger train earnings accruing to the parties hereto under this contract, shall be divided on a mileage basis, except as provided in Sections 23 and 24.

XXIII. The Central and Valley Companies each reserves to itself the exclusive right to carry on the trains of the New Orleans Company, all local or way passengers, baggage, mail, and express, between Baton Rouge and New Orleans and all intermediate points, and the New Orleans Company covenants and agrees that all revenues derived from such business between New Orleans and Baton Rouge and intermediate points shall accrue to the Central and Valley Companies.

XXIV. The Central and Valley Companies grant to the New Orleans Company the right to solicit passenger traffic from and to Baton Rouge, La., originating at or destined to points on or reached by the New Orleans Company or its connections via junctions west of the Mississippi River, and the Central and Valley Companies covenant and agree that for the service of handling said passenger traffic between Baton Rouge and New Orleans Company's transfer boat at the East bank of the Mississippi River, it will accept ten cents (10¢) per passenger in each direction, and for the purpose of this traffic, the passenger station and other passenger facilities at

Baton Rouge and the station agent, clerical and other forces, shall be considered joint.

XXXV. All annual or trip passes issued by the New Orleans Company and which are made good by it over the lines of its railroad, shall be honored on the through trains herein provided for, between New Orleans and Baton Rouge, but shall not be honored on any of the through trains of the Central and Valley Companies. All annual or trip passes issued by the Central and Valley Companies and which are made good over their respective lines, shall be honored on the through trains, hereinbefore mentioned, between New Orleans and Baton Rouge.

General

XXV[illegible]. The usual and customary statements showing the revenues accruing on freight business under this agreement shall be rendered by each company so as to reach the other parties to this agreement on or before the 18th day of the next succeeding calendar month and statements showing the passenger earnings and other miscellaneous passenger train revenue shall be rendered by each Company to the other parties to this agreement on or before the last day of the next succeeding calendar month, and the revenue accruing to each party to this agreement as shown by such statements shall be subject to sight draft.

Each of the parties hereto shall render to the others on or before the 20th day of each calendar month, a statement of the expense incurred by it during the preceding month, in supplying passenger cars with ice water, lighting and other supplies, and any other items provided in this agreement, and of the expense in connection with cleaning the outside of Pullman cars at New Orleans and of cleaning the inside and outside of dining and other cars running in the line, as provided in this agreement. Payments of such expense shall be made within 15 days after the receipt of statement mentioned herein. Bills shall be paid as rendered, and in case of exception to any particular item or items, a counterbill shall be rendered for the item or items to which exception is taken.

The books, records, vouchers, and papers of the parties to this agreement touching or material to the revenues derived from the freight and passenger traffic (including mail, express and other passenger train revenue) or to any charges made by either party under the terms of this agreement shall at all times be freely open to the examination of any of the other parties to this agreement.

XXVII. It is understood and agreed that the continued enjoyment of the rights herein granted to the New Orleans Company by the Central and Valley Companies shall depend upon the payment of moneys, and the faithful performance of the obligations herein undertaken to be paid and performed by the New Orleans Company, and if default shall be made by the New Orleans Company in any of the payments herein agreed to be made by it, and each

default shall continued for sixty (60) days after the amount payable shall become due, or if the New Orleans Company shall fail to keep and perform any covenant or stipulation on its part to be performed, contained in this agreement, and such default shall continue for sixty (60) days after demand, in writing, of performance by the grantor company, then, and in such case, and although no action may have been taken on account of previous defaults, the right of the New Orleans Company to the use or enjoyment of the rights and privileges herein granted to it, shall, at the election of the Central Company or the Valley Company, as the case may be, as to the rights and privileges granted by it, but not otherwise, at once cease and determine, and the New Orleans Company may, upon such election having been made and notice to be given, be excluded from the use and enjoyment of the rights and privileges so granted.

XXVIII. It is further mutually agreed that all costs and damages on account of personal injuries shall be borne by the parties on whose tracks the injuries occur. Claims for loss of or injury to baggage shall be borne by the party on whose road the loss or injury occurs, if the same can be located, and if it cannot be located, the cost shall be borne by the parties pro rata according to mileage. Each party assumes all liability and responsibility for all death, damage, loss, or injury to its property or to persons and property in its care, and for the loss of its funds arising from the fault or negligence of any of the joint employes mentioned in this agreement, except as provided in Section 12 of this agreement.

XXIX. If any difference shall arise between any of the parties hereto under this agreement, or if arbitration becomes necessary under the provisions hereof, whether between the Central Company and the Valley Company, or between them or either of them, as the case may be and the New Orleans Company, or between the Central Company, the Valley Company and the New Orleans Company, or any of them, as the case may be, the party or parties desiring arbitration may demand such arbitration (it being understood that for the selection of arbitrators where the Central and Valley Companies are both concerned, they are to be treated as one party, and shall be entitled to choose but one arbitrator) by giving written notice thereof to the other party or parties to the dispute, and the name of some persons appointed by it or them to act as arbitrator. The party or parties to whom such notice is given shall appoint a second arbitrator, and shall give the party or parties demanding the arbitration notice in writing of such appointment within ten (10) days from the time of such notice. The two arbitrators so chosen shall appoint a third arbitrator, and if they do not agree upon a third arbitrator within thirty (30) days of the time of notice of the appointment of the second arbitrator, such third arbitrator shall be appointed, upon the application of either party hereto, by a judge of the United States Court for the District in

which any of the property concerned in the dispute is situated, and in case of the refusal or neglect of the party or parties so notified to appoint the second arbitrator within ten (10) days after it or they have been given a written demand for arbitration as aforesaid, then the single arbitrator appointed by the party or parties demanding such arbitration shall, at the request of the party or parties appointing him, proceed to hear and determine the matter as if he were an arbitrator appointed for that purpose by all the parties to the dispute; and the three aribtrators so chosen, or the said arbitrator, if there shall be but one, shall proceed at once to hear and determine the matter in controversy after giving to all the parties to the dispute reasonable notice, of which the arbitrators or arbitrator shall be the judge, of the time and place of hearing. If any arbitrator shall decline or fail to act, the party or parties by whom he was chosen shall appoint another to act in his place. All the arbitrators shall be wholly disinterested in the matter in controversy and in no way connected with either of the parties thereto. The decision or award of the arbitrators, or a majority of them, or of the said arbitrator, if there shall be but one, made in writing after hearing the parties or party who shall have attended in compliance with notice as above required, shall be final and binding upon the respective parties. In arbitration under this agreement, each party shall be responsible for the compensation of the arbitrator acting on its or their behalf, and the compensation of the third arbitrator shall be paid one-half (½) by the party or parties appointing one arbitrator, and one-half by the party or parties appointing the other arbitrator.

XXX. Unless sooner terminated as hereinbefore provided, this agreement shall continue in force for a period of three (3) years from June 1, 1916, subject to termination then or thereafter upon six months' notice in writing by any party to the others of the intention to terminate the agreement, and shall be binding on the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused these presents to be executed in triplicate, by their duly authorized officers, the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY,
By C. H. MARKHAM, *President.*

Attest:
BERT A. BECK,
Assistant Secretary.

Witnesses:
C. M. KITTLE.
M. P. BLAUVELT.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
By C. H. MARKHAM, *President.*

Attest:
BURT A. BECK,
Assistant Secretary.

Witnesses:
C. M. KITTLE.
M. P. BLAUVELT.

NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY.
By J. S. PYEATT, *President.*

Attest:
H. GENERESS DUFOUR,
Secretary.

Witnesses:
GEORGE BLOGDONE.
W. H. REYNOLDS.

STATE OF ILLINOIS,
County of Cook, ss:

On this 24th day of April A. D. 1916, before me, a Notary Public in and for the County and State aforesaid, personally appeared C. H. Harkham personally known to me, who signed and executed the foregoing instrument in my presence, and that of the two witnesses, whose names are thereto subscribed as such, and who being by me duly sworn did depose and say that he is the President of the Illinois Central Railroad Company, that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed thereto by order of the Board of Directors of said corporation, and that by like order he signed the same as President of said corporation; and thereupon he acknowledged in the presence of the two subscribing legal witnesses that he executed and delivered the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Witness my hand and notarial seal this day and year first above written.

F. G. HULL, *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

On this 24th day of April A. D. 1916, before me, a Notary Public in and for the County and State aforesaid, personally appeared C. H. Harkham personally known to me, who signed and executed the foregoing instrument in my presence, and that of the two witnesses, whose names are thereto subscribed as such, and being by me duly sworn did depose and say that he is the President of the Yazoo & Mississippi Valley Railroad Company; that he knows the corporate seal of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed thereto by order of the Board of Directors of said corporation, and that by like order he signed the same as President of said corporation; and thereupon he acknowledged in the presence af the two

subscribing legal witnesses that he executed and delivered the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Witness my hand and notarial seal this day and year first above written.

F. G. HULL, *Notary Public.*

STATE OF LOUISIANA,
Parish of Orleans, ss:

On this 3rd day of May A. D. 1916, before me, a Notary Public in and for the County and State aforesaid, personally appeared J. S. Pyeatt personally known to me, who signed and executed the foregoing instrument in my presence, and that of the two witnesses, whose names are thereto subscribed as such, and who being by me duly sworn did depose and say that he is the President of the New Orleans, Texas & Mexico Railway Company; that he knowns the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed by order of the Board of Directors of said corporation, and that by like order he signed the same as President of said corporation; and thereupon he acknowledged in the presence of the two subscribing legal witnesses that he executed and delivered the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Witness my hand and notarial seal this day and year first above written.

GEORGE JANVINN, *Notary Public.*

ILLINOIS CENTRAL RAILROAD COMPANY,
OFFICE OF THE PRESIDENT,
Chicago, April 24, 1916.

Mr. J. S. PYEATT,
President, New Orleans, Texas & Mexico Railway Company.

DEAR SIR: Referring to agreement dated June 1st, 1916, between The Yazoo & Mississippi Valley Railroad Company, the Illinois Central Railroad Company, and the New Orleans, Texas & Mexico Railway Company;

In connection with paragraph 30, it is our understanding that if notice is given by the New Orleans, Texas & Mexico Railway Company within twelve months from June 1st, 1916, that it is its desire to have the terms of the contract made five years from June 1st, 1916, instead of three years, The Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company will agree to such a change.

Yours truly,

C. H. MARKHAM, *President.*

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY

AGREEMENT SUPPLEMENTAL TO AND AMENDING PARAGRAPH 30 OF TRACKAGE AGREEMENT OF JUNE 1ST, 1916

June 1st, 1917

This Supplemental Agreement, Made and entered into this 1st day of June A. D. 1917, by and between Yazoo & Mississippi Valley Railroad Company, hereinafter called "Valley Company," party of the first part; Illinois Central Railroad Company, for itself and as Lessee of the Chicago, St. Louis & New Orleans Railroad Company, hereinafter called "Central Company," party of the second part, and New Orleans, Texas & Mexico Railway Company, hereinafter called "New Orleans Company," party of the third part;

Witnesseth:

That Whereas, said parties by written instrument dated June 1st A. D. 1916, made and entered into a certain contract in writing whereby an arrangement was made for handling the traffic of New Orleans Company from New Orleans, Louisiana, to North Baton Rouge, Louisiana, and to the Boat Transfer of New Orleans Company across the Mississippi River at North Baton Rouge, the terms and provisions of which are set forth in said instrument; and

Whereas, under Paragraph XXX of said contract it was provided that the same should continue in force for a period of three years from said date and be subject to termination then and thereafter upon six months' notice in writing of any party to the others of the intention to terminate the agreement; and

Whereas, it is desired to change the provisions as to termination of said contract.

Therefore, It Is Agreed By And Between The Parties As Follows:

That Paragraph XXX of said contract between the parties hereto dated June 1, 1916, and hereinabove referred to, be changed to read as follows:

XXX. Unless sooner terminated as hereinbefore provided, this agreement shall continue in force until the expiration of five years after written notice shall have been given by any party to the others of the intention to terminate the same, and shall be binding on the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused these presents to be executed in triplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY,
By (Signed) C. H. MARKHAM, *President.*

Attest:
(Signed) BURT A. BECK,
Ass't Secretary.

Witnesses:
(Signed) F. P. RYAN.
(Signed) F. G. HULL.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
By (Signed) C. H. MARKHAM, *President.*
Attest:
(Signed) BURT A. BECK,
Ass't. Secretary.

Witnesses:
(Signed) F. P. RYAN.
(Signed) F. G. HULL.

NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY,
By (Signed) J. S. PYEATT, *President.*
Attest:
(Signed) J. H. LAUDERDALE,
Ass't. Secretary.

Witnesses:
(Signed) J. E. ANDERSON.
(Signed) WM. MINTO.

STATE OF ILLINOIS,
County of Cook, ss:

On this 16th day of July A. D. 1917, before me, a Notary Public in and for the County and State aforesaid, personally appeared C. H. Markham, personally known to me, who signed and executed the foregoing instrument in my present and that of the two witnesses, whose names are thereto subscribed as such, and who being by me duly sworn did depose and say that he is the President of the Illinois Central Railroad Company; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed thereto by order of the Board of Directors of said corporation; and that by like order he signed the same as President of said corporation; and thereupon he acknowledged in the presence of the two subscribing legal witnesses that he executed and delivered the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Witness my hand and notarial seal this day and year first above written.

(Signed) P. S. HANNAGAN,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

On this 16th day of July A. D. 1917, before me, a Notary Public in and for the County and State aforesaid, personally appeared C. H. Markham, personally known to me, who signed and executed the foregoing instrument in my presence and that of the two witnesses whose names are thereto subscribed as such, and who being by

Page Tightly Bound

me duly sworn did depose and say that he is the President of the Yazoo & Mississippi Valley Railroad Company; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument as the corporate seal of said corporation, and that it was affixed thereto by order of the Board of Directors of said corporation, and that by like order he signed the same as President of said corporation; and thereupon he acknowledged in the presence of the two subscribing legal witnesses that he executed and delivered the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Witness my hand and notarial seal this day and year first above written.

(Signed) P. S. HANNAGAN,
Notary Public.

STATE OF LOUISIANA,
County of Orleans, ss:

On this 23rd day of July, A. D. 1917, before me a Notary Public in and for the County and State aforesaid, personally appeared J. S. Pyeatt, personally known to me, who signed and executed the foregoing instrument in my presence and that of the two witnesses, whose names are thereto subscribed as such, and who being by me duly sworn did depose and say that he is President of the New Orleans, Texas & Mexico Railway Company; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed by order of the Board of Directors of said corporation, and that by like order he signed the same as President of said corporation; and thereupon he acknowledged in the presence of the two subscribing legal witnesses that he executed and delivered the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Witness my hand and notarial seal this day and year first above written.

(Signed) J. E. ANDERSON,
Notary Public.

AT DE QUINCY, LA., *December 18, 1916.*

Mr. C. H. MARKHAM,
President, Illinois Central Ry., Chicago, Ill.

DEAR MR. MARKHAM: Following are the changes in our present working agreement between Baton Rouge and New Orleans that we request, and believe are justified:

First, that you furnish under your agreement with the Pullman Company your prorata of sleeping cars required between Houston or Sabine River and New Orleans, and that you pay a portion of our present expense of passenger train service between Baton Rouge and New Orleans at ratio that your local passenger train revenue be-

tween Baton Rouge and New Orleans bears to the through revenue of passenger trains between these points.

Second, that you relieve us of the switching and handling charges at New Orleans.

Third, that an appropriate share of the freight and passenger traffic controlled by your lines to or from the West via New Orleans or Baton Rouge be routed via our lines.

Yours truly,

(Signed) J. S. PYEATT.

ILLINOIS CENTRAL RAILROAD COMPANY,
OFFICE OF PRESIDENT,
Chicago, March 26, 1917.

DEAR MR. PYEATT: Referring to your letter of December 18th, mine of February 23rd, and our conference in New Orleans on March 9th, I beg to advise willingness to comply with request that we furnish under our agreement with the Pullman Company our prorata of sleeping cars required between Houston or Sabine River and New Orleans, which I would understand to be the Pullman cars used in the line between Baton Rouge and New Orleans, and with the further understanding that before definitely deciding on how we shall settle for this service you are to advise the terms of your contract with the Pullman Company under which the service is now being operated. We will also contribute toward your present expense of passenger train service between Baton Rouge and New Orleans at ratio which our passenger train revenue between Baton Rouge and New Orleans bears to the through revenue of passenger trains between those points. This is in entire compliance with request No. 1 as contained in your letter of December 18th.

Request No. 2 asking that we relieve your Company of the switching and handling charges at New Orleans was changed at New Orleans conference to ask that we relieve you of such switching and handling charges as did not involve payment to other interests than ours. If you, yourself, had taken part in framing the original contract I should hesitate a long time before agreeing to the proposed modification, but since you did not take such part I can understand some of the reasons why this feature does not appeal to you as being altogether fair, and in the interest of a continuation of the very good understanding which now exits, I am willing to conse't to this modification.

I suggest that the new arrangement be made effective as of April 1st and if you will wire your concurrence on receipt of this letter I will issue the necessary instructions to my people.

Yours very truly,

(Signed) C. H. MARKHAM.

Mr. J. S. PYEATT,
President, Gulf Coast Lines, Houston, Texas.

815-L *Exhibit A-40*

STANDARD OIL COMPANY OF LOUISIANA,
Baton Rouge, La.

File: Switching at North Baton Rouge, Louisiana.

Mr. Jos. Hattendorf. G. F. A.,
Illinois Central Railroad, Memphis, Tenn.

DEAR SIR: As you know, the railroad freight rates on all commodities in carload quantities, as published, include the services of the carriers in the placing of empty car equipment at the shipping point at the loading site, and also include the placement of the loaded cars at destination at the unloading site. You also know that for a time during the years 1909 and 1910, immediately after our plant was located and construction started, the placing of empty cars for outbound shipments and the placing of loaded cars was done for us by your Company. The performance of this service by the carriers is a universal practice.

We began doing our own switching and spotting of empty car equipment and loaded cars during the year 1910, and have been doing it since that time.

We would be most pleased to have you go into the matter and have you submit us a proposition to give us the same service as you are now giving all other shippers of carload freight, and the details of the manner in which you propose to perform the service.

Yours truly,

(Sgd.) D. R. WELLER, *President.*

b/c.

Above copied from copy in file 18776 in office of Mr. M. L. Costley, Asst. Traffic Manager, I. C. R. R. J. E. N.

W-18776 MEMPHIS, TENN., *May 5th, 1924.*

North Baton Rouge, La.: Switching for Standard Oil Company of Louisiana

Mr. LONGSTREET: Please note attached letter from President Weller of the Standard Oil Company of Louisiana in reference to the above.

Colonel Egan advises me that while in Chicago last week, you mentioned to him the matter of controversy with the Godchaux people about switching at Reserve and that you wanted Colonel Egan and myself to see Mr. Godchaux with a view of trying to come to some understanding.

Evidently this proposition of the Standard Oil Company is somewhat similar. They do not say what they want but apparently they are after an allowance for the service performed by themselves.

It occurred to me that perhaps the best way to handle the matter would be to have a conference with the Standard Oil people and secure preliminary information as to just what they have in mind and what they expect and if you approve I will handle the matter accordingly, reporting to you with a recommendation as to what should be done.

(Sgd.) JOS. HATTENDORF.

IC: jh.

Above copied from carbon copy in file 18776 in office of Asst. Traf. Mgr., New Orleans. J. E. N.

W-18776 MEMPHIS, TENN., *May 11th, 1924.*

North Baton Rouge, La: Switching for Standard Oil Company of Louisiana

Memorandum for file:

Discussed the above file with Mr. Longstreet at Chicago on the 9th instant.

He thought it would be advisable for me to see Mr. Botto. He thought we should say to Mr. Botto that we are prepared to carry out the provisions of our tariff and are willing to perform the additional service and if they will indicate just what they wish done in the matter of spotting empties and taking out loads we are prepared to meet their wished.

(Sgd.) J. H.

IC: jh.
co Mr. Longstreet.

Above copied from file 18776 in office of Asst. Traf. Mgr. I. C. R. R., New Orleans. J. E. N.

W-18776 MEMPHIS, TENN., *May 20th, 1924.*

North Baton Rouge, La.: Switching for Standard Oil Company Louisiana

Mr. LONGSTREET: Returning my letter of May 5th, which we discussed in Chicago on the 9th instant.

Was in New Orleans on the 12th and had some discussion with Traffic Manager Tousey. On the following day I saw Mr. Botto at Baton Rouge. Colonel Egan was with me on both occasions and Supt. Walker was also present when we talked to Mr. Botto. Had intended to make an immediate report of the discussion but through inadvertence I overlooked doing so.

Mr. Tousey knew nothing of the proposition and seemed inclined to question the authority of the local people at Baton Rouge to bring it up. He said the matter had been mentioned several times but that his people had never felt disposed to press it, his understanding

being that the Baton Rouge situation was being taken care of in the same manner as at other plants of the Standard Oil Company of New Jersey such as Bayway, Bayoone, etc. Mr. Tousey asked us not to mention the fact that we had been discussing it with him.

Mr. Botto, however, told us at the outset that he had been instructed to brin' the matter up by their Vice-President, Mr. Ferro, who has charge of manufacturing and operation. Without making any positive statement he intimated pretty clearly that the matter was taken up on instructions from the New York office.

According to Mr. Botto the conditions at Baton Rouge are similar to those at their plants at Bayway, Bayoone, and Clear Water, N. J. At each of the later points the Standard Oil Company, he stated, performed the switching service and were reimbursed on per car basis by the carriers. He stated a similar arrangement was in effect at Whiting, Ind., but later said he was not sure whether this was the case or not.

They ask that we perform the switching at their plant by placing loads and taking out empties or placing empties and taking out loads or if we preferred to let them continue to do the work and reimburse them on some basis to be agreed upon. He intimated pretty broadly the latter arrangement was what they want and, in fact, the only one that would be satisfactory, although he stated that if we wanted to go into the plant with our own service they would let us do so, at least for a time, until it could be demonstrated which was the better plan, his purpose being to let us perform the service for a time merely for the effect with the idea that they would later substitute their own service for which we would make them an allowance.

Mr. Botto had been studying Interstate Commerce decisions, also our tariffs. He mentioned the St. Louis Coke & Iron decision and had extracts from our Indianapolis switching tariff under which we provide for certain similar arrangements.

Mr. Botto stated they now employ 5 switch engines. That practically all the work is of the character heretofore mentioned in this letter, there being very little intra-plant service, the latter consisting principally of switching tanks to repair tracks. He stated that for us to perform the service would require probably the same number of locomoit'ves that they were using themselves, as service would be necessary when called for and that it would not be practicable to assign any particular hours or periods for switching the plant.

He had figures showing that in 1921 they handled 38,000 cars and in 1922 55,000 cars. Figures for 1923 have not yet been completed. According to their calculations, the cost of their switching service averaged $4:70 per car, but Mr. Botto stated that these figures included certain amounts for extension of tracks and maintenance for which they could not properly ask a reimbursement. Without mentioning any particular figure Mr. Botto rather indicated that they thought about $2:00 per car would be about right for their service. He asked me if I could tell him what allowance was made at Wh'ting,

stating that he had already taken steps to find out. I told him I did not know whether any allowance was made at that place.

We said to Mr. Botto that the volume and nature of their business seemed to require that they maintain their own switching service and that probably they could not get along with any reasonable amount of service that a carrier could be called upon to perform. Even though the bulk of their switching was placing of loads and taking out empties or vice versa, it appeared to us that the service was more "plant facility" than "carrier" service. That, of course, our Company was disposed to give their Company service and facilities equal to what we did for our largest patron, and that we stood ready to recommend that we give them that amount of service but that we could not recommend that an allowance be made to them. Further, however, we would have to know just what they would require of us in the way of service before we could give a final answer.

It is understood that Mr. Botto would later furnish Supt. Walker with a blue print of their layout and an outline of the character of service they would want us to perform. Supt. Walker was instructed to return to Baton Rouge when Mr. Botto was ready, after which he is to make a report.

IC;jh. (Sgd.) Jos. HATTENDORF.

Above copied from carbon copy in office of Asst. Traf. Mgr., file 18776. J. E. N.

STANDARD OIL COMPANY OF LOUISIANA,
Baton Rouge, La., June 6, 1924.

Switching at North Baton Rouge, La.

Mr. Jos. HATTENDORF,
General Freight Agent, Y. & M. V. Railroad Company,
Memphis, Tenn.

DEAR SIR: Please let us have a reply to our letter of May first about giving us switching service into and out of our Refinery at North Baton Rouge, La.

Yours truly,

b/h (Sgd.) D. R. WELLER. J. J. B.

Above copied from file 18776 in office of Asst. Traf. Mgr. J. E. N.

MEMPHIS, TENNESSEE, AT ATLANTA, GEORGIA,
W-18776 *June 10th, 1924.*

North Baton Rouge, La.: Switching for Sandard Oil Company of Louisiana

Mr. D. R. WELLER, *President,*
Standard Oil Company, Baton Rouge, Louisiana.

DEAR SIR: Replying to yours June 6th regarding the above.

While I did not reply to your letter of May 1st you will recall that General Superintendent Egan and myself were in Baton Rouge

on May 13th and we discussed this matter with you at some length. Superintendent Walker was also present during a part of this conference.

The conversation developed a good deal of misunderstanding as to just what you wanted us to do. However, we talked the matter over in considerable detail and you were to supply further information after which we were to look into the matter further.

Superintendent Walker, or one of his Assistants, was to call on you and I believe you thought you would be able to supply him with a blue print showing your layout and would indicate just what you think we ought to do under the conditions of the tariff, etc. I do not know whether our Division people have called on you or not but I am writing Supt. Walker to ascertain present status.

Yours truly,

(Sgd.) Jos. Hattendorf.

cc Mr. A. H. Egan.
Mr. J. F. Walker.

Above copied from carbon copy in file 18776 in office of Asst. Traf. Mgr. J. E. N.

October 16th, 1924.

Mr. Pelley.

Refer to past correspondence and personal interviews in reference to the request of the Standard Oil Company, of Louisiana, at Baton Rouge, that we take over the placement of loads to be unloaded, and placement of empties for loading, at the various loading and unloading docks in their plant.

I am attaching hereto a blue print of the tracks in the Standard Oil Company Plant, showing their various loading and unloading tracks and their general track layout.

I had a conference with their Mr. J. J. Botto on October 9th and discussed with him fully the entire situation. They can place at the various loading docks a maximum of eight six cars at a setting. Their peak loading in any one day has been 204 cars.

You will observe our single connection with this plant as shown in black line, and you will also observe that to serve this plant there are nine connections with the L. R. & N. Railway, all of which have to used in performing the major portion of the switching service. They have one unloading dock with a capacity of thirty cars, another ninety seven cars for handling gas, oil, and gasolene, and there are sever'l other unloading docks of lesser capacity.

I do not know what the arrangement of the Standard Oil Company with the L. R. & N. Railway is covering the use of the L. R. & N. main line, and Mr. Botto was not familiar with it, but that they have a right to use it is apparent.

You will also note the severity of the curvatures.

The impracticability of our performing this service will be noted first by not having proper kind of motive power. The engines of the Standard Oil Company are oil burning and there is no hazard

from fire. With coal burning engines, I feel that the fire hazard would be very great, for example, in placing a train of gasolene it would be necessary to pass through the plant of the Oil Company to the L. R. & N. Railway main line, use it for a considerable distance to the unloading docks, the connection of which is from the L. R. & N. main line. I refer to the rack where attached blue print shows 97 cars. This movement is entirely impracticable and is the largest single movement in the operation of this plant. The return of the empty cars would be by the same route.

At the day of our conference there were eight hundred cars in this plant. I am giving you this as information to indicate the magnitude of their business. In the year 1923 there were 55,000 loaded cars handled, 31,000 of which were outbound loads and 24,000 inbound loads. Mr. Botto's statement *ot* me was that for the year 1922 their expense of handling cars was $3.9661 and in 1923 it was $3.6873 per car. I stated to Mr. Botto that we had interchanged with this plant since 1909 and that we saw no reason why any change should be made in present practice, that we had no right to use the L. R. & N. main track to serve this plant even though we were desirous of doing so, that the curvature of a number of the tracks was prohibitive of our class of power and that we were very well satisfied with the present system of handling. His reply to this was that he realized the great difficulties confronting us in our lack of knowled'e of the class of equipment they use for loading and unloading, and that he felt that if we were to undertake to operate this plant, that the output would be reduced thirty per cent, yet, their New York office was insistent upon consummating this deal, the final result of which would be that they would continue to operate and that we would compensate them for the cost of the service rendered us in the placement of cars to be unloaded and placement of empties to be loaded.

He cited the case covered, by Baltimore & Ohio Tariff No. 18699, confirmed by the Interstate Commerce Commission. He gave reference to tariff covering National Tube Company of Pittsburg, at their Pennsylvania plant and at their Continental Plant. He referred to Illinois Central, Northern & Western Lines Tariff No. A–8213. Also referred to Interstate Commerce Act, Page 46, Section 15, Paragraph 13 as follows:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnished any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section." 34 Stat. L, 584, 41 Stat. L, 488.

He then gave me photostat copies of Indiana Harbor Belt Railroad covering allowances to the Youngstown Sheet & Tube Company. The same Railroad allowances to American Steel Foundries. Same Railroad to United Chemical & Organic Products Company; same Railroad to Standard Oil Company of Indiana, at Whiting; same Railroad to General American Tank Car Corporation. New York Central Railroad to Standard Oil Company of Indiana, at Whiting, all of which I enclose.

I am also enclosing a photograph of the class of engine used by the Standard Oil Company in performing their service.

I believe that we should notify the Standard Oil Company at Baton Rouge that we cannot undertake to do any more than we are now doing. If you agree with me in this, I will so notify Mr. Botto.

A. H. EGARFRET,
General Superintendent.

BATON ROUGE, *October 22, 1926.*

Personal.

Mr. PATTERSON.

Some two years ago the question of our Company doing the switching in the Standard Oil Company's plant at Baton Rouge was brought up by the Standard Oil Company. It was handled back and forth for sometime, after which it died.

Since the change in the Administration of the Standard Oil Company, it has again come up. The new Traffic Manager, Mr. R. W. J. Flynn, approached Superintendent Walker on the subject several times, and about two months ago spoke to me about it. Both Superintendent Walker and myself dodged the subject by advising him that it has been previously handled and settled. On Monday, Oct. 18th, Mr. Flynn called me on long distance telephone, stating that it was very necessary that he immediately close out the question of switching their plant; and that he was anxious for a conference at the earliest possible date. Mr. Flynn stated that it was his purpose to confer with both our Company and the L. R. & N., with a view of determining how the railroads would handle the work. I advised him that I would be in Baton Rouge Friday, October 22nd, which date he advised would be satisfactory, and that he would also have representatives of the L. R. & N. present.

Superintendent Walker and myself called at Mr. Flynn's office at nine o'clock this morning, with a view of listening to what he had to say. Mr. Flynn stated that the L. R. & N. people came to see him yesterday, and that they would not be present today, but would state his position to us the same as he did to the L. R. & N.; which was, that he had just returned from New York, where he had a conference with the Executives of his Company, and that he had been directed to say to the two railroads that we must immediately

take over the switching at their plant. He further stated that his Company had gotten all the legal, as well as political, view points, and knew positivelt that it was the duties of the Carriers to place cars for unloading, as well as empties for loads; and that while their Company had assumed this expense for many years they would not any longer, and at all of their other operations the switching was done by the Carriers; this being the only plant that they were performing this service, but that this must be discontinued as quickly as possible. He also stated that they were not willing to compromise by their being paid a charge for placing loaded cars for unloading and empties for loading, but that it was their intention to entirely relieve themselves of operating any part of a Terminal Switching; and that if there was any interplant switching necessary, that they would be willing to pay for it.

I did not attempt to discuss our side of the question with Mr. Flynn today, but advised him that this was a new question with me, and one that deserved more thought than I had given it; and would necessarily have to be given consideration by our Executives before any definite answer would be given him.

In this connection, I tried to ascertain just what position the L. R. & N. took, and from what I understand they merely told them they would give them their answer later; but did inquire if they could purchase the engines that the Standard Oil Company own.

You understand that the L. R. & N. tracks go through the entire plant, and their tracks are used jointly by the Standard Oil Company, and, for your information, I am attaching hereto blue print, showing the track lay-out of th Standard Oil Company, as well as the L. R. & N. and our Company.

Mr. Flynn is very impatient with reference to an answer, and I shall appreciate if you will give this consideration, advising.

General Superintendent.

cc Mr. J. HATTENDORF.

Above copied from carbon copy in file 18776 in office of Asst. Traf. Mgr. J. E. N.

ILLINOIS CENTRAL SYSTEM,
On Line, Feb. 25th, 1927.

Memorandum of conference Friday, February 25th, 1927, in the offices of the President of the Standard Oil Company of Louisiana, Baton Rouge

Present: Messrs.: C. K. Clarke, President, Standard Oil Co.; J. A. Bechtold, Vive Pres. & Sect'y. Standard Oil Co.; R. W. J. Flynn, Traffic Manager, Standard Oil Co.; L. A. Downs, President, Ill. Central System; F. R. Mays, Gen. Supt., Ill. Central System; J. Hattendorf, Asst. Frt. Traf. Mgr., Ill. Central System; J. F. Walker, Superintendent, Ill. Central System.

Mr. Clarke opened the discussion, stating his position in about the following way:

1. The Standard Oil Company regards it the duty of Carriers to spot cars for unloading, to place empties for loading and pull out loads in manner suitable to the operation of that plant. The intra-plant service being one concerning his company only. The Standard Oil Company has been performing this service for some years and now insisted the Carrier take over that part which it is their duty to perform.

2. That as to the carrier service itself; only two parties are concerned; a, The carriers; b, The Refinery.

That the method of operation and expense incident thereto are questions of detail, in which the refinery is not concerned, other than its own intra-plant service should be continued in such manner as might suit the needs or convenience of the Carriers service.

3. That the Standard Oil Company had for some two or three years made request that the Carriers take over that part of the service, which he felt it their duty to perform, but which they had declined to do. That his company felt refusal was unwarranted, and there seemed a tendency to unnecessarily delay a final decision. He then proceeded to say that their patience was exhausted and demanded, in unusually strong language, an immediate decision.

Mr. Downs in response to the above statements pointed out the following:

1. The Y. & M. V. recognizes an *o*bligation to handle loads and empties to and from the customary tracks within the plant, and is prepared to render such service, subject to certain conditions which it seemed essential to consider.

2. Practical difficulties in the way of such an arrangement as contemplated, namely:

a. Physical lay-out of the track facilities is such as to make it impracticable for the Y. & M. V. to handle its business without the use of the L. R. & N. facilities to which it has no access.

b. Separate operations of the Y. & M. V. and L. R. & N., each handling its own traffic, supplemented by the intra-plant service, would tend to congestion and other difficulties that would interfere with the operatio.. of the refinery.

c. Railroad operations would conflict with plant facility operation and would tend to increase, beyond economic reason, the operating expenses.

d. That any operation, other than under a single management of control, would seem impracticable.

In these exchanges Mr. Clarke continued to insist that the question of operation was incidental and of detail character not concerning the refinery. Finally reaching the point of stating that his company had no objection to single control; in fact, thought it desirable.

Mr. Downs then stated such being the situation he felt the practical solution was continued operation within the industry by the

Standard Oil Company, the Carriers to make suitable allowance therefor. That such an allowance would have to reasonable and not exceeding the actual cost, and, perhaps, might well be below cost. That of necessity it would have to meet the legal requirements.

Mr. Clarke promptly accepted this suggestion, and, at least in manner, indicated this was the result he had hoped for all the time.

Mr. Clarke having accepted the suggestion of Mr. Downs stated that he felt obligated to communicate at once with the L. R. & N. to determine if satisfactory to that line, and assuming it was next suggested the matter be referred to proper officers of the respective companies for the purpose of working out a plan, so that the new arrangement might be put into effect at the earliest possible moment. He insisted upon immediate disposition.

After withdrawing from President Clarke's office, a subsequent conference was held in the conference room, attended by Messrs. Downs, Mays, Hattendorf, Walker, and Flynn for discussion of further proceedure. Following is summary of discussion:

That a joint conference—Y. & M. V., L. R. & N., and Standard Oil Company be held at Baton Rouge, Monday, February 28th. This conference to be attended by Messrs. Mays and Hattendorf and corresponding officers of the L. R. & N., the latter to be invited by Mr. Flynn.

It was the concensus that preliminary to consummation of the arrangement outlined in the foregoing, there should be such understanding between the parties with regard to the use of all facilities as to safeguard the interests of those concerned for all future time. To that end contracts should be executed that would provide uninterrupted use in the future of the facilities now used in the switching of the plant. Mr. Downs stated the Y. & M. V. was disposed to grant to the refinery the use of such tracks as might be essential to the carrying out of this plan, and assumed that the L. R. & N. would be disposed to do likewise; the matter to be handled by the Standard Oil Company.

Mr. Flynn proposes to submit statements of their operations and suggested joint study by accounting officers with a view of determining what would be a reasonable allowance to the Standard Oil Company for its service. Other tests were suggested but this feature is to be worked out later.

It was also suggested that such consideration, as seemed pertinent, be given allowances made by Carriers elsewhere for services of similar character, particularly those allowances that have been passed upon by the Interstate Commerce Commission.

The meeting then adjourned.

FRM and JH. 2-25-27.

Above copied from carbon copy in file 18776 in office of Asst. Traf. Mgr. J. E. N.

[Telegram]

ILLINOIS CENTRAL SYSTEM,
Baton Rouge, Feb. 28, 1927.

PATTERSON,
Chicago.
LONGSTREET,
Chicago.

At conference today L. R. & N. agreed to go along on plan suggested at Thursday's conference—namely, Refinery to perform switching and allowance made therefor. It was then decided each line would designate a representative, these two to jointly formulate a plan of procedure to determine what proper compensation to refinery should be. L. R. & N. later agreed to have first conference of these two representatives at Baton Rouge on Monday next, so that as little delay as possible will occur. We jointly suggest selection of someone from our Accounting Department thoroughly familiar with the accounting rules of the Commission and the formulas outlined by them for testing out questions of this character. We think this representative should thoroughly familiarize himself with rulings of the Commission made in various cases involving industrial railroads which they have decided. Mr. Flynn will furnish a list of these cases which will be mailed tomorrow if possible. Furthermore we think our representative should thoroughly familiarize himself with the investigation made at Whiting and basis upon which they determined the allowance at that point. We also think it would be well for whoever is selected to stop at Memphis enroute Baton Rouge to discuss further with us. In addition to foregoing it was decided in the conference to have Messrs. Sippel and Mays cooperate with refinery people in defining the limits of the industry and the tracks to be served so that contracts for perpetual use thereof might be made. Joint. G. E. P., D. W. L.

MAYS & MATTENDORF.

8:15 P. M.

[Memorandum]

ILLINOIS CENTRAL SYSTEM,
Baton Rouge, Feb. 28th, 1927.

Memorandum of conference of February 28, 1927, in Conference Room of the Standard Oil Company of Louisiana, Baton Rouge, La.

Present—Messrs. F. R. Mays, J. Hattendorf, E. J. Redon, Paul Sippel, J. N. Campbell, R. W. J. Flynn.

The purpose of the conference was to discuss the matter of switching within the plant.

Messrs. Sippel and Campbell concur in the principle that insofar as it may be their legal duty to perform services within the plant, considering the various interests involved, the said services could be performed in most practical and economic manner by the Standard

Oil Company of Louisiana, and that reasonable allowance within the meaning of the Interstate Commerce Act should be allowed by the Carriers to the Standard Oil Company of Louisiana for its services. This is line with statements previously made by representatives of the Y. & M. V. Railroad.

To facilitate proceedure, and to the end that these principles may be given prompt consideration, the questions involved were divided into three branches, and disposed of as follows:

1. Defining of the plant limits, and the facilities including tracks necessary to serve the industry, and the execution of necessary contracts to insure continued operation for the future.

This subject to be handled to a conclusion by Messrs. Sippel and Mays with proper officers of the Standard Oil Company of La. The Standard Oil Company of Louisiana desire contracts for the use of carrier tracks to run to perpetuity.

2. Plan of proceedure for determination of the proper allowances by the carriers to the Standard Oil Company of La. for its services. Under this branch, the Carriers will undertake to outline a plan of proceedure, whether by tests or otherwise, that will determine an allowance that will meet the requirements of the Act to regulate commerce.

For this purpose the Y. & M. V. and L. R. & N. Railroads, respectively, will each designate a representative who will proceed immediately with necessary investigations, and will as necessary communicate with proper officers of the Standard Oil Company of Louisiana.

3. Operation of the Union Tank Car Company.

This subject has not previously been discussed. The following is the situation as stated by Mr. Flynn:

"The Union Tank Car Company, a separate and distinct corporation from the Standard Oil Company of Louisiana, having no affiliations what so ever, lease from the Standard Oil Company of La. a certain strip of land at the northern extremity of property owned by the Oil Company in North Baton Rouge. This property is used for the storage of empty tank cars when not in active service.

"Sufficient trackage has been provided at the expense of the Car Company, which connects at the eastern extremity with the main line of the L. R. & N. There is no connection direct to the tracks of the Y. & M. V. with this storage yard except through the tracks of the L. R. & N.

"It has been customary, since the creation of this storage yard, for the engines of the Oil Company to place in their storage the cars that are not immediately required. This service has been rendered without any cost what so ever to the Car Company, or to any of the Carriers, and has made it necessary for the engines of the Oil Company to go out on the right-of-way of the L. R. & N. in order to place cars in storage, or take them out of storage.

"This storage was created primarily, no doubt, with three points in view:

"First, in having it in close proximity to the Refinery, cars will be immediately available for the Oil Company's use.

"Second, that the creation of a storage at the expense of the Tank Car Company removes the necessity for the Carriers to store tank cars on their way-lands, and haul them to and from as they may have an order from time to time by the Oil Company or Tank Car Company. It, therefore, is economy to the Carrier as well as the Oil Company.

"The question now is what arrangements are to be placed in effect directly between the Union Tank Car Company and the Carriers for the handling of this empty equipment to and from the storage, and have it available for the industry when required, without making it obligatory upon the Oil Company to use its engines and facilities in moving these tank cars back and forth, for which it receives no compensation what so ever at this end.

"Another phase of the Union Tank Car Company's activities at North Baton Rouge is the owning of Car Repair Shop on property leased from the Standard Oil Company, and which cannot be approached by the Carriers. It has been customary for the materials coming into the shops to be spotted by the Oil Company's engines. This is a duty that should devolve upon the Carrier, and it is the thought of the writer that the Tank Car Company should be required to construct a spur track connection with the railroads, so that they can make proper delivery of material or equipment that comes into, or goes out of the shops, without cal'ing upon the Oil Company to perform any gratuitous services."

The Carriers, hearing of the matter for the first time, will take under advisement with a view of determining what action should be taken.

ILLINOIS CENTRAL SYSTEM,
Chicago, June 6, 1927.

Mr. J. F. DARTT:

Referring to your letter March 5th, file 5A, and returning papers relative to conducting cost study at Baton Rouge, Louisiana, to determine what allowance shall be made the Standard Oil Company for plant switching.

At meeting held at Baton Rouge, March 7th by General Superintendent Mays, Asst. Freight Traffic Manager Hattendorf and representatives of L. R. & N. Company, it was decided that cost study be jointly conducted by Y. & M. V. and L. R. & N. Co. and that field work be performed by practical switchmen, the Y. & M. V. furnishing four Engine Foremen and the L. R. & N. three Conductors.

Test was started 7 a. m. March 9th and completed 7 a. m. March 17th, the first two days being used for educational purposes and results not included in determining cost per car.

Crews worked by Standard Oil Company during Test Period March 11th to 17th as follows:

March 11th:
4 crews 7 A to 3 P.
2 crews 3 P to 11 P.
1 crew 11 P to 7 A.
March 12th:
4 crews 7 A to 3 P.
2 crews 3 P to 11 P.
March 13th (Sunday):
2 crews 7 A to 3 P.
1 crew 3 P to 11 P.
1 crew 11 P to 3 A.
March 14th to March 17th:
3 crews 7 A to 3 P.
2 crews 3 P to 11 P.
1 crew 11 P to 7 A.

Reduction of one crew made effective March 14th account decrease in business handled.

Railroad Field Checkers rode the engines to which they were assigned, reporting every movement made, and time consumed, in Conductors Train Books, which were turned in at close of each day and distribution of time between Railroad, Plant, and Overhead, made by Accounting Department representatives.

U. T. L. storage yard

The Union Tank Line Company have a storage yard located at the North End of plant constructed at expense of the Tank Car Company on ground leased from the Standard Oil Company and used for storing surplus tank cars.

The time consumed in moving empty tanks from interchange tracks or unloading racks to U. T. L. storage yard was charged to Railroads, as this movement was considered as equivalent to placing empty car for loading or removing empty after being unloaded.

The time consumed in switching empties out of U. T. L. Storage Yard and movement to and placing at loading racks was charged to the Plant, but shown as a separate item in exhibit "D" as the time consumed in switching and movement from U. T. L. Storage Yard is liable to be a disputed matter. The time consumed in switching U. T. L. Repair Yard is also shown as a separate item under time charged to Plant.

Checking cuts on interchange

Time consumed in checking cuts on interchange is charged to Railroads, but it is possible this time may be properly chargeable to plant, as part of this time is consumed in taking individual car

numbers, which service would be performed by yard clerks if switching handled by Railroads.

Standard Oil Company costs

The Standard Oil Company disbursements are made by Departments and it was necessary for that company to restate their accounts to Interstate Commerce Classification as near as possible, which will account for small charge to Other Supplies for Locomotives, as it was almost impossible to make separation of expense chargeable to this account and Enginehouse Supplies.

Train and enginemen

The rates paid Engineers and Firemen by the Standard Oil Company are in excess of standard railroad rates, number of switchmen employed are in excess of railroad standard by one man and time and one-half is allowed by the Oil Company for Sunday service.

Yardmasters

The Standard Oil Company would not furnish rate of pay of their General Yardmaster stating that on account of long and faithful service his rate is higher than ordinarily would be paid and they suggested that rate paid by Y. & M. V. General Yardmaster at Baton Rouge be used.

In addition to General Yardmaster, the Oil Company have a chief Yardmaster and two Assistant Yardmasters. Our Operating Department at Baton Rouge state that if the switching at this plant was performed by Railroad it would only require two Assistant Yardmasters.

Fuel

The Standard Oil Company advised the charge for fuel oil does not represent the amount charged on their books, but is based on market price of oil.

Water

Water furnished locomotives is supplied from artesian wells supplying the entire plant and it was impossible to determine amount applicable to locomotives. The charge for water was based on consumption of three tanks (average capacity 1,680 gallons) per eight hour shift or 630 gallons per hour at Y. & M. V. cost of production at Baton Rouge, .07¢ M gallons.

Depreciation

The Oil Company would not furnish the depreciated value of their locomotives as shown on their books, and were of the opinion the

depreciated value of locomotives should be determined on basis of 3% per annum depreciation from date engines were purchased, which basis was used in arriving at cost to Standard Oil Company.

Engine in service

The Standard Oil Company own five engines, all of which were taken into consideration in figuring interest and Depreciation, as four of the engines were in actual service when test was started, and the fifth engine considered an economical reserve for the efficient operation of the Plant. The last three days of the Test Period three engines were in actual service.

I am attaching hereto Exhibits as follows:

"A" Cost as furnished by Standard Oil Company, and cost per loaded car interchanged.

"B" Cost as furnished by Standard Oil Company, less excess and rates.

"C" Cost per Hour and loaded car interchanged as furnished by Standard Oil Company compared to Railroads cost.

"D" Distribution of time of engines in service during Test Period.

"E" Y. & M. V. R. R. cost if switching performed by that line.

In arriving at cost as shown in exhibit "E" the switching costs at Baton Rouge and New Orleans Division were used for all accounts except Interest and Depreciation. Interest and Depreciation was based on using engines 171–172–173–174 and 175 as Gen. Supt. Mays and Officer of New Orleans Division advised this class of locomotives would be required if service was performed by Y. & M. V. R. R.

In making allowance to Standard Oil Company the Operating Department should consider the track arrangement at the Standard Oil Company plant, as it will be noted from blue print attached that cars moving between Y. & M. V. and Refinery Avenue, and L. R. & N. and Railroad Avenue have to be handled around the north end of the plant to reach their destination, requiring considerable more time than an ordinary switch movement, and increasing time chargeable to railroads.

(Sgd.) W. B. Higgins,
Traveling Auditor.

Above copied from file 18776 in office of Asst. Traf. Mgr. J. E. N.

Illinois Central System

Memorandum of conference held in Office of Superintendent Walker of the Y. & M. V. at Baton Rouge, Monday, June 27th, 1927.

President: Messrs. Sippel, Campbell, and Tippin, representing the L. R. & N. Company, and Messrs. Mays, Hattendorf, Walker, Higgins, and Redon, representing the Y. & M. V. Railroad.

Mr. Mays was made Chairman of the conference and it was understood that he would act as spokesman in the discussion later contemplated with the Standard Oil people.

An analysis of the joint report of Messrs. Higgins and Tippin was made with the following unanimous result:

1. It seemed proper that L. R. & N. cost figures be used in determining the measure of allowance, being the lowest.

2. Formulas 1 to 6 were discussed and it was concluded that Formula 5 was the proper one, as it included all services which it seemed proper for carriers to assume. This formula provides a per car charge of $1.53 on basis of L. R. & N. cost.

3. Consideration of plant layout indicated certain disabilities for which the carriers are not responsible and which should properly be taken into account in considering the measure of the allowance.

4. Study of the plant operation during the test period and subsequently indicated certain plant facility ineffecienc'es as compared with carriers' operation that likewise should properly be taken into accoun'.

5. In discussing Nos. 3 and 4 it was concluded that a deduction of slightly less than 30% below L. R. & N. cost figures would be proper.

After going over the figures thoroughly Messrs. Mays and Sippel concluded that the allowance might properly be made $1.10, which amount would meet all conditions in their judgement.

Conference was then arranged with Officers of the Standard Oil Company and the meeting adjourned to latters offices with representation, as follows:

For the carriers: Same as above.

For the Standard Oil Company of Louisiana: Messrs. Bechtold, Flynn, and Eisworth.

Mr. Mays presented copy of the joint accounting report, and had Mr. Higgins explain its contents in detail, after which Mr. Mays further stated the result of the morning conference as detailed above and the conclusions thereof; namely, that the carriers were prepared to make an al'owance of $1.10 per loaded car for all services performed the *the* Standard Oil Company within the plant limits as outlined in the joint report. He explained fully the basis on which this result had been arrived at.

There was some discussion of formulas 1 to 6, reference being made to time consumed in checking cars on the interchange; to excess wages paid by the Standard Oil Company of Louisiana; the switching of the U. T. L. repair track, etc. The Standard Oil officials agreed that Formula 5 was the right one to use. They, however, took exception to the deduction of 43 cents per car from the L. R. & N. cost figures of $1.53 per car under Formula 5 on the ground that the deduction was purely arbitrary and based on exercise of judgment alone without positive proof. They admitted some disability in matter of plant facility and likewise that carriers could probably operate more efficiently, but they thought a deduction of nearly 30% too great.

Subsequently Mr. Bechtold made counter proposition that deduction of approximately 15% be made, making the allowance in round

figures $1.30 per car. This, he said, would be acceptable by his Company as a fair settlement, and they would make no claim for past services or reparation. For protection of both the Standard Oil Company and the carriers he desired it to be understood that further tests be made, say at end of 6 months or other periods thereafter, and if different results were shown, consideration might be given to such changes in the allowance as seemed necessary.

After discussion of these proposals at length without agreement, attention was called to that feature of previous discussion having to do with the execution of contracts between the Standard Oil Company on the one hand and the carriers on the other for use of carriers facilities which it was necessary for the Standard Oil Company to have in order to perform the necessary switching service. Messrs. Bechtold and Flynn stated they intended to pursue these matters, but thought the allowance should first be disposed of.

In further discussion of the allowance, carriers being unwilling to increase the offer of $1.10 per car, Messrs, Bechtold and Flynn stated they were prepared to accept that amount as the maximum carriers were willing to pay, but would recommend further procedure in the institution of a suit before the I. C. C. for payment of reparation for period of two years and to secure from the Commission the fixing of an allowance for the future. They also insisted that carriers publish tariff at the earliest effective date and likewise make effort to secure sixth section authority from the I. C. C. to make effective on short notice.

Carriers were unwilling to proceed except upon understanding that allowance of $1.10 per car be regarded as fair compensation and upon further understanding that there be no effort on the part of the Standard Oil Company to secure reparation for past services. They called attention to statement of former President Clarke that the settlement of the measure of the allowance on fair terms would dispose of any question of compensation on past transactions.

Being unable to reach an agreement the conference adjourned.

Supplemental Memorandum

Conference Messrs. Sippel, Mays, Bechtold, and Flynn in offices of the Standard Oil Company of Louisiana, Afternoon of June 27, 1927.

Following morning conferences, Messrs. Mays and Sippel made counter proposition with view of finally settling the measure of switching allowance. Having further considered the deduction to be made from the test figure of $1.53 per car as shown in joint check, they agreed to make the allowance $1.20 per car if Standard Oil Company of Louisiana would accept same as fair and reasonable compensation, no claim to be made for past services. This was agreed to by Messrs. Bechtold and Flynn upon understanding that an immediate publication, short notice to be secured if possible from I. C. C.

The Standard Oil Company further requested perpetual use of certain tracks owned by the carriers, now being used by the Standard Oil Company's engines in performing switching service, blue prints, and contracts to be made and submitted to cover.

Above copied from carbon copy in file 18776 in office of Asst. Traf. Mgr. J. E. N,

W-18776 MEMPHIS, TENNESSEE, *September 24, 1927.*

North Baton Rouge, La.: Switching account Standard Oil Co.

Mr. F. R. MAYS:

Returning papers received with yours of the 9th instant. This file was held pending a conference with Mr. Flynn, who made an engagement but was later unable to keep it.

However, we have decided that we would make the allowance on cars handled in local switching, the same as on road haul cars and I have advised Agent Wildes accordingly

There is one other matter in dispute that will have to be straightened out later, namely merchandise cars between the freight house and the Standard Oil Company which contain joint loading for the three lines, namely Y. & M. V., G. C. L., and Southern Pacific. There is no joint tariff providing an allowance to the Standard Oil Company, each of the three roads providing its own allowance and as to merchandise cars these allowances apply only for 10,000 pounds or more loading which means that amount for each line.

Will endeavor to straighten this out as soon as I can see Mr. Flynn.

(Sgd.) JOS. HATTENDORF.

IC:jh.

cc Mr. Geo. Wildes, Jr.

Above copied from file 18776 in office of Asst. Traf. Mgr. J. E. N.

JUNE 30, 1932.

T. M. MILLING, Esq.,
Counsel, Standard Oil Company of Louisiana,
New Orleans, La.

ELMER A. SMITH, Esq.,
Commerce Counsel, Illinois Central Railroad Company,
Chicago, Ill.

Subject: Ex Parte No. 104, Part 2, Terminal Services. Standard Oil Co. of La., Index No. 185; Government Exhibit No. A-40.

DEAR SIRS: At the hearing in New Orleans, La., May 12 (Record pages A-921 to A-930), a series of letters identified as Government Exhibit No. A-40 was offered and received in evidence. The exhibit included 24 separate sheets comprising 14 separate letters and/or memoranda. These separate letters and/or memoranda were not

specifically described on the record, nor were they individually identified apart from the exhibit number. It is understood on the record that they were later to be so separately identified for convenience of counsel. That identification has now been made, the outline of which is embodied in the attached memorandum sent forward for your information.

Very truly yours,

W. P. BARTEL, *Director.*

Att.

Subject: Ex Parte No. 104, Part 2, Terminal Services. Standard Oil Company of Louisiana, Index No. 185, Exhibit A–40

Exhibit A–40 was offered and received in evidence May 12, 1932, at the hearing in New Orleans, La. (Record page A–921, 930), relating to terminal services performed on the industrial tracks of the Standard Oil Company of Louisiana at Baton Rouge, La. The Exhibit includes 24 pages comprised of 14 separate copies of letters and/or memoranda as follows:

Page No.	Letter or memorandum	From	To	Date	Substance
1	Letter	D. R. Weller, president, Standard Oil Co. of La., Baton Rouge, La.	Jos. Hattendorf, G. F. A., Illinois Central R. R., Memphis, Tenn.	Not shown	Application for services by the Illinois Central. Copy taken from file 18776, office of M. L. Costley, A. T. M., Ill. Cent.
2	Letter	Jos. Hattendorf, Memphis, Tenn.	Mr. Longstreet	5/5/24	Suggesting a conference between railroad officials and the Standard Oil Co. Taken from file 18776, office of A. T. M., Ill. Cent. R. R., New Orleans.
3	Memorandum			5/11/24	Merely an office memorandum made at Memphis, Tenn., for Ill. Cent. Traffic Manager's office file 18776, bearing upon the probability of the Ill. Cent. arranging for the desired services.
4	Letter	Jos. Hattendorf, Memphis, Tenn.	Longstreet	5/20/24. File W–18776.	Relates to description concerning the considerations before traffic officials of the Ill. Cent. on the subject of Standard Oil Company's application for the desired services.
5	Letter	D. R. Weller, Standard Oil Company.	Hattendorf	6/6/24	Merely a tracer for reply to a letter (presumably the one here described on page 1), written by Mr. Weller to Mr. Hattendorf May 1, 1924.
6	Letter	Jos. Hattendorf	Weller	6/10/24	Replying to the tracer letter of 6/6 explaining that investigation is still under way, and outlining the suggested steps yet to be taken before determination in the matter.

Page No.	Letter or memorandum	From	To	Date	Substance
7	Memorandum	A. H. Egan, Superintendent Ill. Cent. R. R.	Mr. Pelley, V. P. of Ill. Cent.	10/16/24	Describing the matter in consideration from an operating viewpoint, and suggesting that because of operating disabilities (therein described) notice should be given the Standard Oil Co. that the Ill. Cent. could not undertake the services desired.
8	Letter	A. H. Egan, Baton Rouge.	Mr. Patterson, (Ill. Cent. official).	10/22/26. A. T. M. file 18776.	Outlining the consideration given to the subject over a period of two years, and a revival of it in October 1926 by the new traffic manager of the Standard Oil Co., R. W. J. Flynn. The letter urges early determination of the Standard Oil Co. application.
9	Memorandum of conference in offices of the Pres. of Standard Oil Co., Baton Rouge.	----------	----------	2/25/27. A. T. M. file 18776.	This memo evidently prepared by an officer of the Ill. Cent. attending conference, outlining the consideration of the subject at the conference, and undertakes to record the attitude of the respective industrial and railroad officials.
10	Telegram	Mays and Hattendorf.	Patterson and Longstreet.	2/29/27	Announcing the decision reached at the conference in which the L. R. & N. and Ill. Cent. joined in the plan under which the Standard Oil Co. was to perform the services desired by it and for which they were to be paid an allowance by the carriers.
11	Memorandum of conference held at Baton Rouge, attended by officers of the railroad and of the industry including R. W. J. Flynn.	----------	----------	2/28/27	This memo unsigned but by some official of the Ill. Cent., embodies his views of what took place at the conference relating to practical operating matters probably to be encountered in arranging for the services.
12	Letter	W. B. Higgins, Traveling Auditor of Ill. Cent.	J. F. Dartt, (evidently official of the Ill. Cent.)	6/6/28	Outlining cost study made by the traveling auditor, Higgins, showing the factors embodied[1] therein, etc. Taken from A. T. M. file 18776.
13	Memorandum of conference held in the offices of Ill. Cent. Supt. Walker, Y. & M. V., Baton Rouge, La.	(1)	(1)	6/27/27	Deals with the practical operating consideration in rendering the proposed services and also an idea of the conference as to what the amount of the allowance should be and why.

[1] Attended by officers of the L. R. & N., Ill. Cent., and before concluded, officers of the Standard Oil Co. of La., including Messrs. Bechtold, Flynn and Eisworth.

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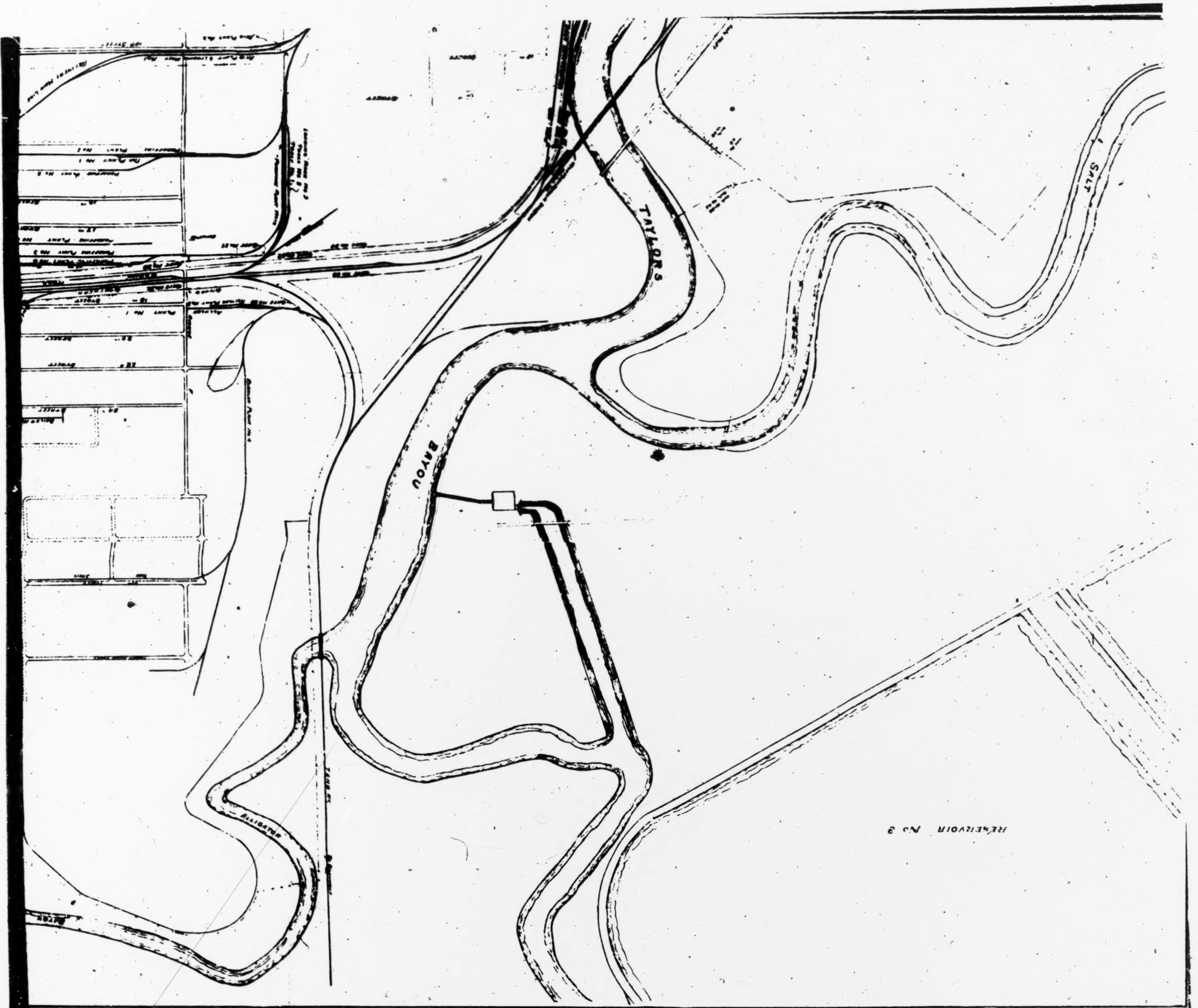
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ALLIGATOR

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No. 2
BOILER HOUSE No. 17
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RECLAMATION YARD No.
18th STREET
FISH SHOP No. 1
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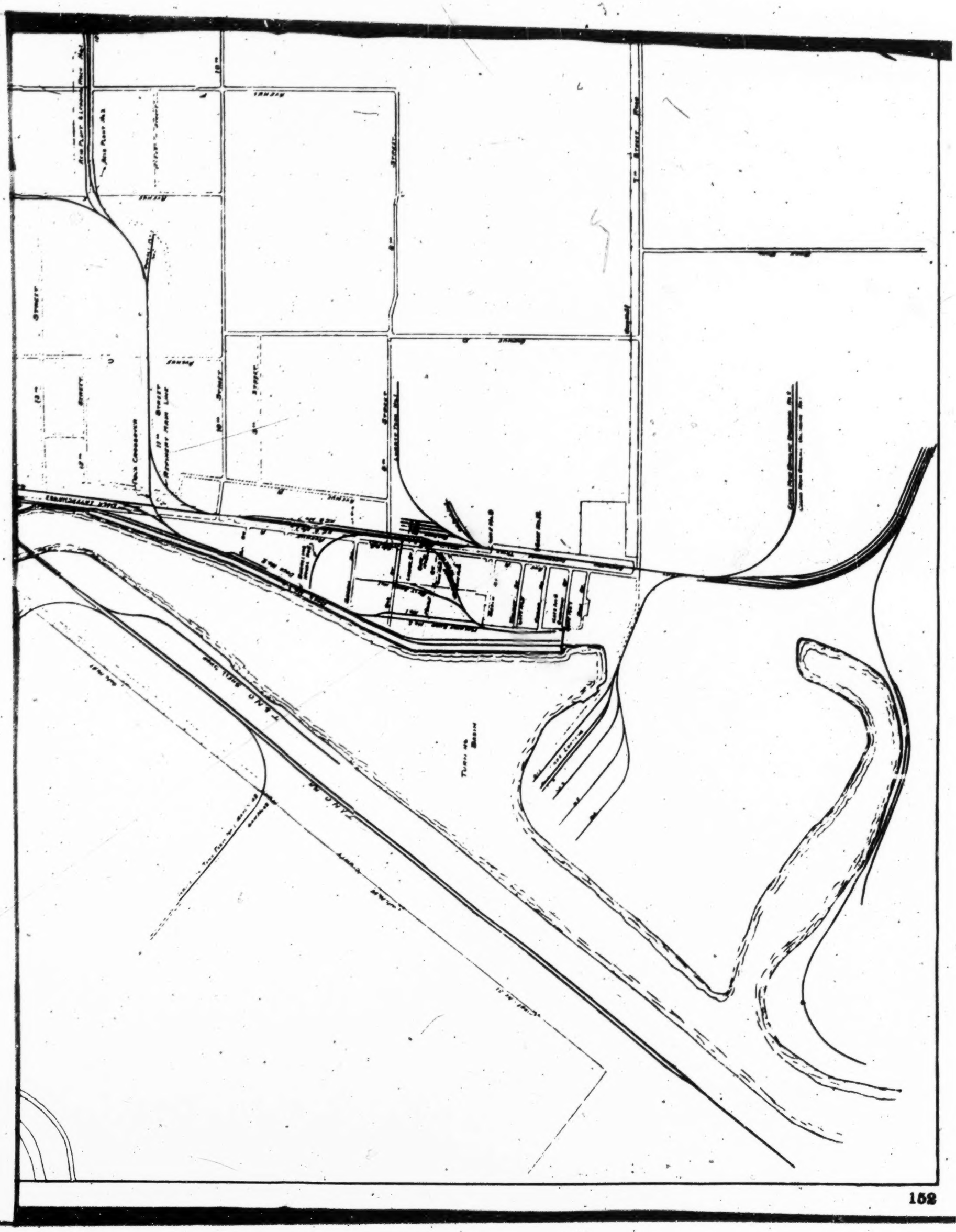
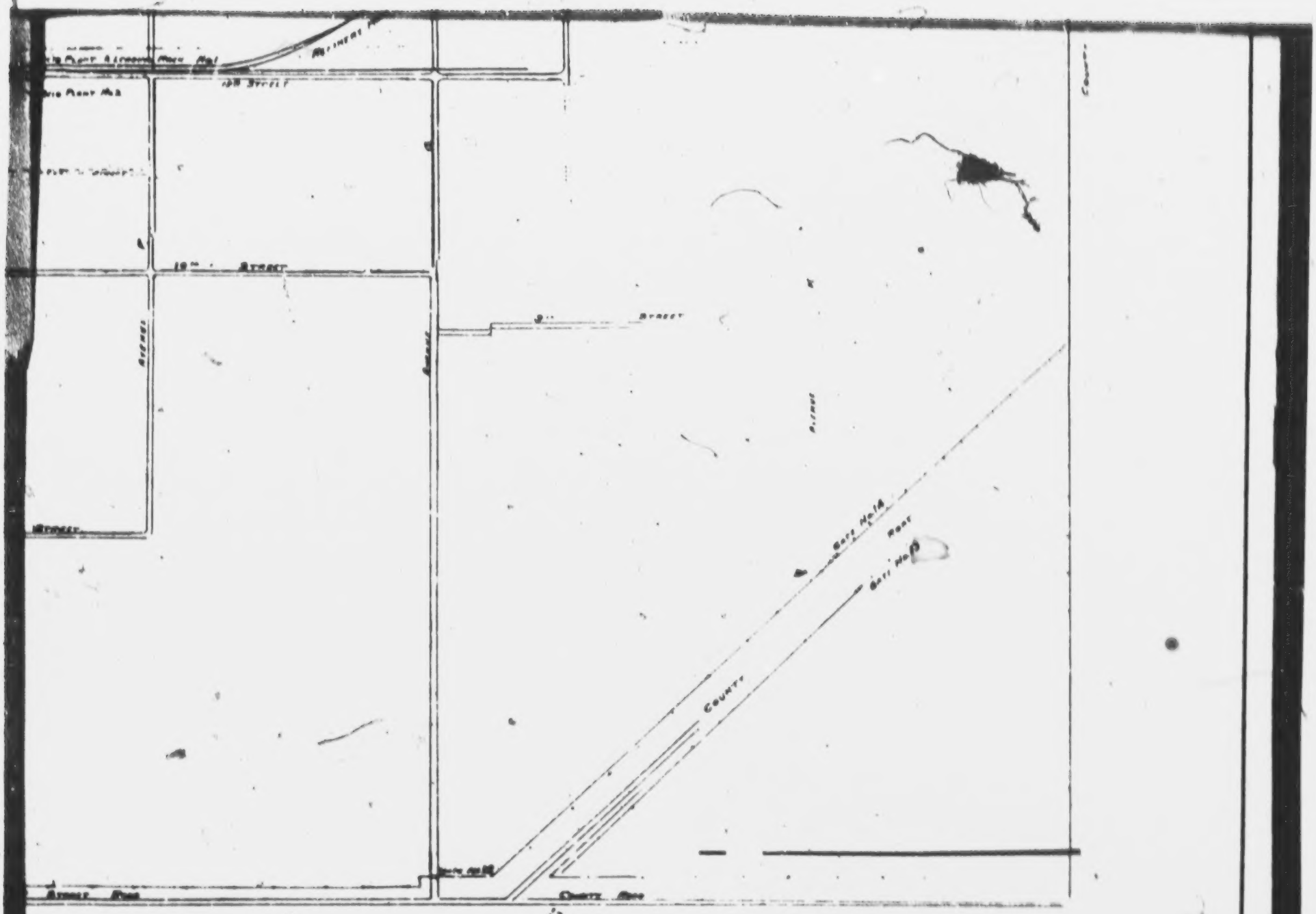
EXHIBIT A-48





GULF REFINING COMPANY

PORT ARTHUR TEXAS

MAP

SHOWING

TRACKS ROADS & FENCES

SCALE 1" = 200'

Drawing No 8878

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PAGE

Page No.	Letter or memorandum	From	To	Date	Substance
14	Letter	Jos. Hattendorf Memphis, Tenn.	F. R. Mays	9/24/27. A. T. M. file 18776.	This letter states the substance of the agreement reached between the respective carriers on the one hand and the Standard Oil Co. on the other, to include within the allowance cars handled in switching service by a switching carrier as well as those handled to and from the plant of the industry by the line-haul carrier.

815-N

Exhibit A-47

Loaded cars interchanged between Gulf Refining Company, Port Arthur, Texas, and T. & N. O. R. R. and T. & F. S. Ry. from April 1, 1924, to April 30, 1932

Year	Month	In	Out	Total	Total cost for handling	Average cost per car
1924	April	986	1,339	2,325	$3,394.07	$1.45573
	May	1,003	1,308	2,311	2,084.91	.90611
	June	1,179	1,238	2,417	2,014.09	.83328
	July	1,493	1,524	3,017	2,165.49	.71776
	August	1,268	1,901	3,169	2,782.57	.86228
	September	1,263	1,826	3,089	2,723.81	.88149
	October	1,267	1,699	2,966	3,339.07	1.1258
	November	1,108	1,412	2,520	2,309.56	.91649
	December	980	1,442	2,422	2,127.47	.87839
1925	January	1,255	1,146	2,401	2,115.36	.88100
	February	1,121	1,068	2,187	2,152.90	.9844
	March	1,357	1,050	2,407	2,401.59	.9977
	April	1,738	1,135	2,873	2,556.26	.8898
	May	3,761	1,486	5,247	3,121.76	.71122
	June	2,626	1,320	4,946	3,916.24	.7918
	July	3,778	1,175	4,953	4,111.40	.83008
	August	2,226	1,675	3,900	3,302.15	.8467
	September	1,426	1,593	3,020	2,746.19	.9093
	October	1,461	1,499	2,960	2,706.89	.93476
	November	1,539	1,259	2,782	2,739.71	.9848
	December	1,490	1,508	2,998	2,643.06	.89961
1926	January	1,273	1,208	2,475	4,538.19	1.8206
	February	1,229	994	2,216	3,208.89	1.4481
	March	2,301	1,346	3,647	2,792.08	.76558
	April	1,164	3,027	4,191	2,948.68	.70357
	May	3,062	1,511	4,573	4,021.06	.8793
	June	2,621	1,240	3,861	4,694.45	1.0605
	July	2,618	1,146	3,764	3,662.85	.97313
	August	2,174	1,393	3,567	3,538.90	.9921
	September	2,021	1,321	3,342	2,956.46	.8846
	October	1,609	1,270	2,879	2,648.13	.9198
	November	1,546	1,377	2,923	2,680.13	.8998
	December	1,846	1,578	3,424	3,287.85	.9601
1927	January	1,630	1,488	3,118	3,419.82	1.0966
	February	1,892	1,121	3,713	2,700.99	.9966
	March	2,599	1,691	4,290	3,568.31	.83177
	April	3,219	1,642	4,861	4,309.72	.8866
	May	2,129	1,554	3,683	4,139.57	1.1240
	June	1,579	1,691	3,270	3,116.88	.9513
	July	1,571	1,818	3,389	2,926.78	.8633
	August	1,647	2,950	3,697	4,637.35	1.2544
	September	1,690	1,980	3,660	3,121.37	.8528
	October	1,745	1,815	3,560	2,998.25	.8400
	November	1,466	1,846	3,312	2,993.50	.9038
	December	1,340	1,770	3,110	3,042.55	.9783
1928	January	1,326	1,697	3,023	4,308.75	1.4237
	February	1,258	1,021	2,279	2,652.74	1.1772
	March	1,382	1,196	2,548	2,821.66	1.1074
	April	1,708	1,177	2,885	3,228.59	1.1174
	May	1,978	1,269	3,247	3,098.33	.9542

Loaded cars interchanged, etc.—Continued

Year	Month	In	Out	Total	Total cost for handling	Average cost per car
	June	1,756	1,154	2,910	$2,744.88	$0.9433
	July	1,587	1,217	2,804	3,773.12	1.3456
	August	1,589	1,808	3,397	3,288.61	.9681
	September	1,491	1,491	2,982	3,217.38	1.0789
	October	1,552	1,697	3,279	2,926.81	.8926
	November	1,473	1,583	3,056	3,011.99	.9856
	December	1,649	1,683	3,332	7,388.41	2.2174
1929	January	1,795	1,484	3,279	5,615.77	1.7127
	February	2,215	964	3,179	2,908.17	.9148
	March	3,804	1,156	4,960	4,385.78	.8842
	April	3,735	1,770	5,505	5,321.87	.9667
	May	4,014	1,774	5,788	4,851.78	.8382
	June	3,516	1,664	5,180	4,512.92	.8712
	July	3,386	2,066	5,452	4,991.49	.9155
	August	3,178	2,242	5,420	5,426.94	1.0013
	September	2,604	1,931	4,525	5,081.87	1.1206
	October	2,581	1,951	4,532	4,869.07	1.0744
	November	1,785	1,409	3,194	3,147.81	.9855
	December	1,697	1,134	2,831	3,956.21	1.3975
1930	January	1,757	1,174	2,931	4,768.32	1.627
	February	1,622	996	2,618	2,681.75	1.024
	March	1,705	1,076	2,781	2,733.18	.983
	April	1,655	1,227	2,882	2,688.89	.933
	May	1,624	1,142	2,766	2,471.39	.893
	June	2,025	1,354	3,379	2,590.02	.767
	July	1,690	1,594	3,284	3,116.75	.949
	August	1,763	1,248	3,011	3,308.79	1.098
	September	1,576	1,507	3,083	3,022.11	.98
	October	1,684	1,681	3,365	2,904.95	.8632
	November	1,537	1,442	3,089	2,502.10	.823
	December	1,508	1,454	2,962	2,477.36	.836
1931	January	1,067	1,323	2,390	4,983.96	2.085
	February	671	1,071	1,742	2,714.00	1.558
	March	654	930	1,584	2,002.00	1.264
	April	729	964	1,693	1,650.00	.9738
	May	801	1,043	1,844	1,642.00	.891
	June	770	1,167	1,937	1,727.00	.892
	July	793	1,161	1,954	1,916.00	.98
	August	631	1,122	1,753	1,808.00	1.026
	September	631	842	1,473	1,964.00	1.34
	October	965	675	1,640	1,209.00	.735
	November	967	545	1,502	1,359.00	.904
	December	1,084	424	1,508	1,520.00	1.007
1932	January	719	524	1,243	1,676.00	1.509
	February	379	436	815	1,492.00	1.8306
	March	275	492	767	677.00	.9781
	April	353	490	843	974.00	1.153
	Total	165,645	133,097	298,742	301,055.11	1.00774

815-O

Exhibit A-48

ON LINE, *April 30, 1923.*

MR. C. B. ELLIS, *Traffic Manager,*
Gulf Refining Company, Pittsburgh, Pa.

DEAR MR. ELLIS: I have just learned that Southern Pacific Company has negotiated with Magnolia Petroleum Company at Chaison, Texas, whereby Southern Pacific Company will allow Magnolia Petroleum Company an allowance per loaded car for all carload traffic handled to or received from Magnolia Petroleum Company interchanged just outside of the plant of the Magnolia Petroleum Company. The allowance is arrived at by taking the traffic of the Magnolia Petroleum Company handled over a certain period on which that company performs the service from interchange track to the loading and unloading facilities direct, it being the purpose of Southern Pacific Company to compensate Magnolia Petroleum

Company for the actual cost of such service. The arrangement does not contemplate any payment for empty cars handled in a similar manner, nor for any intra-plant service which might be performed.

We feel that we will be compelled to meet the action of Southern Pacific Company at Chaison and will want to treat your company equally as well as we do Magnolia Petroleum Company although the service might not be exactly the same in both instances, and the service which your company might perform for us might have to be computed on what we could agree on as the cost of same by some fair method, you realizing that to do anything more than to pay the cost might be considered illegal.

From information received, Magnolia Petroleum Company has had this matter under negotiation with Southern Pacific Company for some months and in order to satisfy themselves an allowance could be accepted for the service which they perform, presented the question to the Interstate Commerce Commission which body, through its Secretary, makes this statement:

"If the proposed suggestion of your Compensation to your company for service that otherwise should be performed by the railroad represents a reasonable allowance for the service, it is not seen that that basis would result in a violation of the law. This statement is predicated on the idea that the allowance will be represented by actual service performed during the period covered by the allowance. It will be necessary that the provision for the allowance be published in a tariff and filed with the Commission."

While apparently the granting of this allowance may be legal in the eyes of the Interstate Commerce Commission, the question arises as to how the Railroad Commission of Texas would view it on intrastate traffic; it being our understanding that heretofore that body has refused to grant any allowance to unincorporated railroads.

I am giving you the above information so that if you feel like opening negotiations for some allowance we can get together and work it out.

Yours very truly,

(Signed) J. F. HOLDEN.

B/C. Mr. H. A. WEAVER.
Mr. J. O. HAMILTON.

Copied from file 2692 in office of H. A. Weaver, K. C. S., in Kansas City, Mo. W. S. R.

815-P

Exhibit A-49

THE GULF COMPANIES,
Pittsburgh, Pa., July 6, 1923.

DEAR MR. HOLDEN: Referring to your letter of April 30, with reference to allowance at Port Arthur:

I observe that T. & F. S. tariff I. C. C. 45, Port Arthur Route System, tariff 2860, provides for the 72¢ per car account the service performed by the Magnolia Petroleum Company at Chaison, Tex.

I have prepared a detailed statement of costs to us account switching at Port Arthur for the month of April, a copy of which is attached, from which it will be noted that the average cost for this plant service on the number of your line during that month was 61.2369 cents per car.

This will no doubt furnish you with sufficient information looking forward towards securing authority from the Commission for granting allowance at Port Arthur refinery account service performed by our engines, and will appreciate hearing from you at an early date.

Yours very truly,

(Signed) C. B. ELLIS.

Mr. J. F. HOLDEN, *V. P.*,
Kansas City Southern Ry., Kansas City, Mo.

Copied from file 2692 in office of H. A. Weaver, K. C. S., in Kansas City, Mo. W. S. R.

815-Q *Exhibit A-50*

February 13, 1924.

7113

Mr. C. B. ELLIS, *General Traffic Manager*,
The Gulf Companies, Frick Building Annex, Pittsburgh, Penna.

DEAR MR. ELLIS: Referring to the subject of payment to your company for the work which you may perform in spotting cars for loading or unloading within your refinery enclosure at Port Arthur, Texas, and interchanged with our company.

It has been difficult for us to arrive at what we considered a proper figure for the reason that the check which was made in connection with representatives of your company, Southern Pacific Lines, and our company developed a different cost at different industries within the switching district at Port Arthur.

It goes without saying, and you will agree with me, that it is very difficult to arrive at a figure in a check period of ten days which might be applicable for a continuous period. The figures which might be arrived at for the ten day period being affected by the conditions prevailing at that time covering the amount of business during that period which might not be normal. We have given the matter a great deal of consideration in conference with all our officials and conclude that a fair payment to your company for doing the work of interchanging all cars with our company outside of your plant and performing all service of actually spotting these cars at the proper points of loading or unloading, would be ninety cents per loaded car, nothing for the empties.

I think you will agree with me also that it would be undesirable for our company to attempt to perform this work within your plant as it would undoubtedly interfere with your own work, consequently all circumstances in connection with the operation should be consid-

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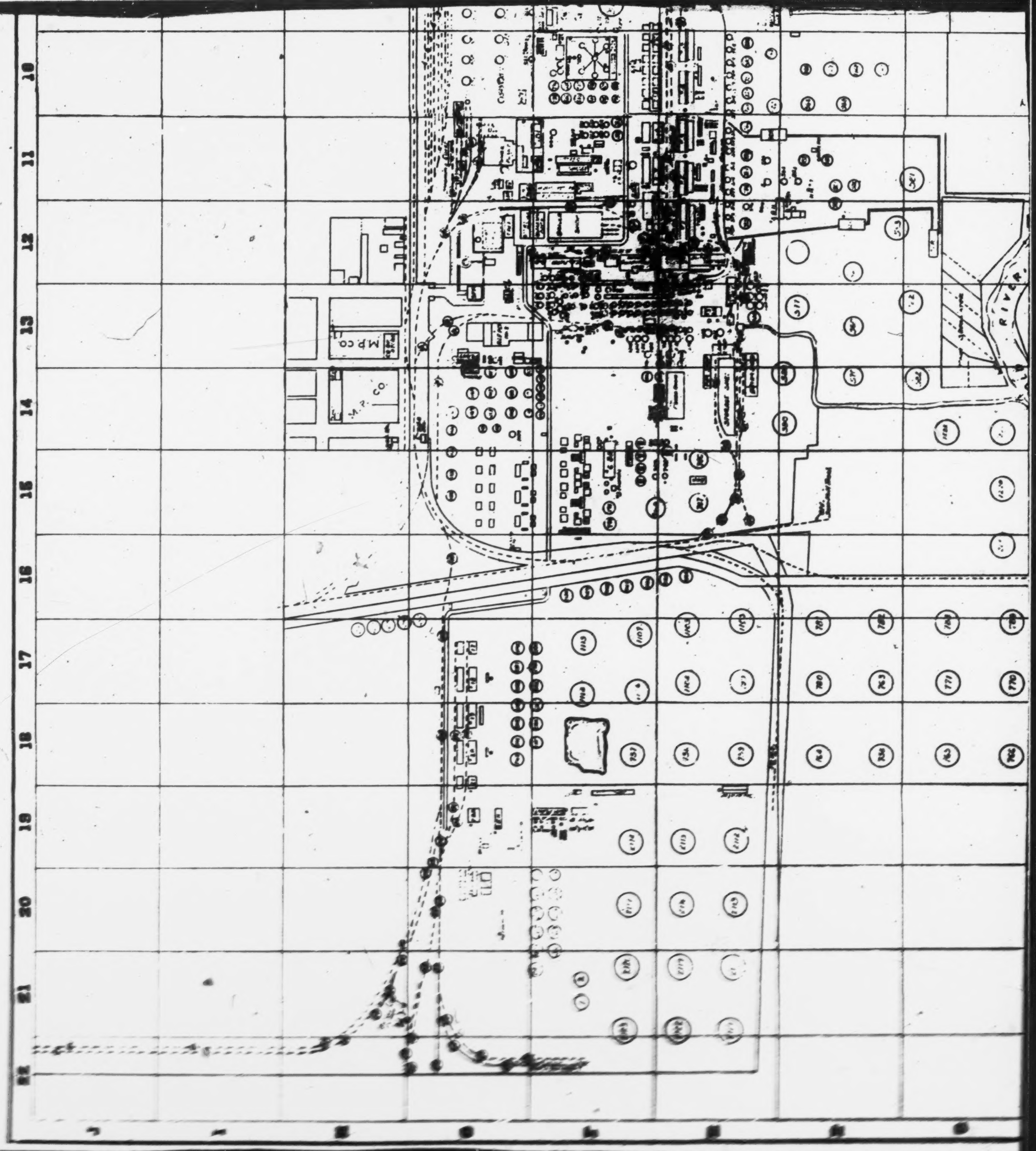
EXHIBIT A-71

O.P. SKELTON
J.S. COLLINS
J.S. COLLINS
W.P. HARRIS & R. WILSON
I. STANLEY
EAST HOUSTON
PATRICK REELS & TROUBOUGH
W.M. BLACK
JOHN
BROWN
C. MARTINEZ
S. TAMEZ
C. HIROMS
J. THOMAS
D.H. BURROUGH
HARRIS
PASADENA
DEEP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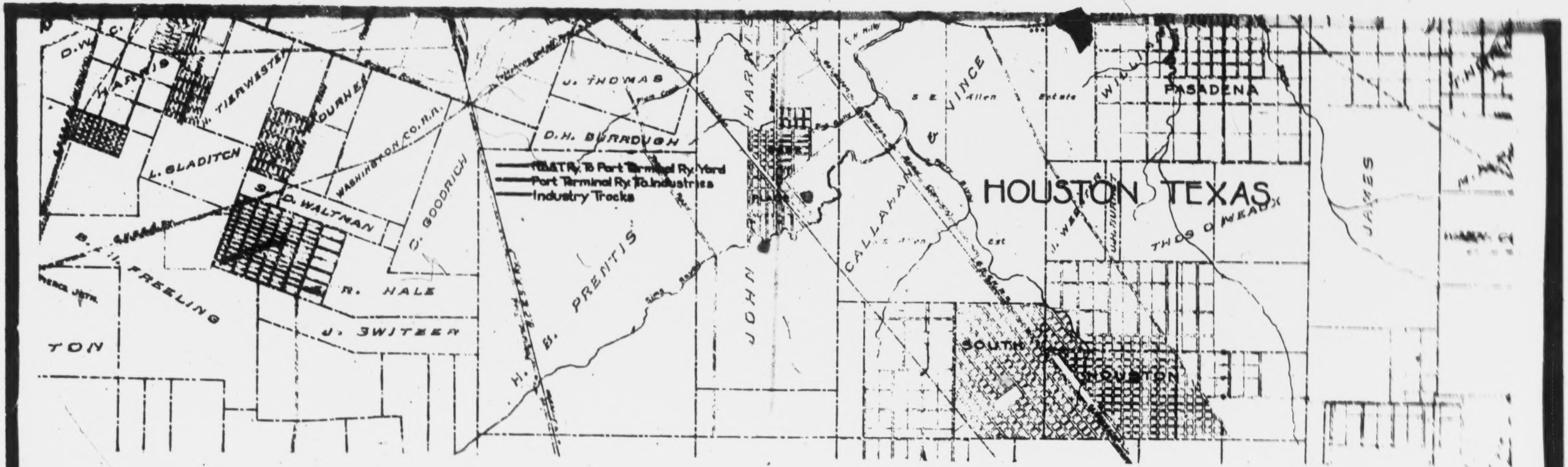
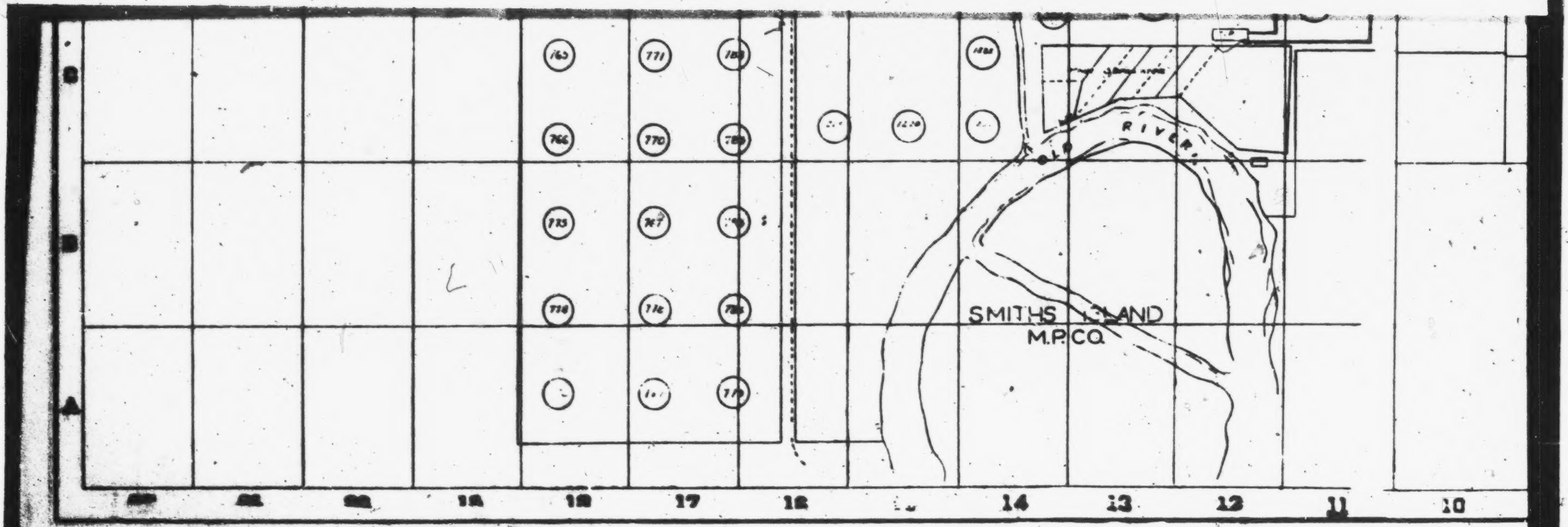
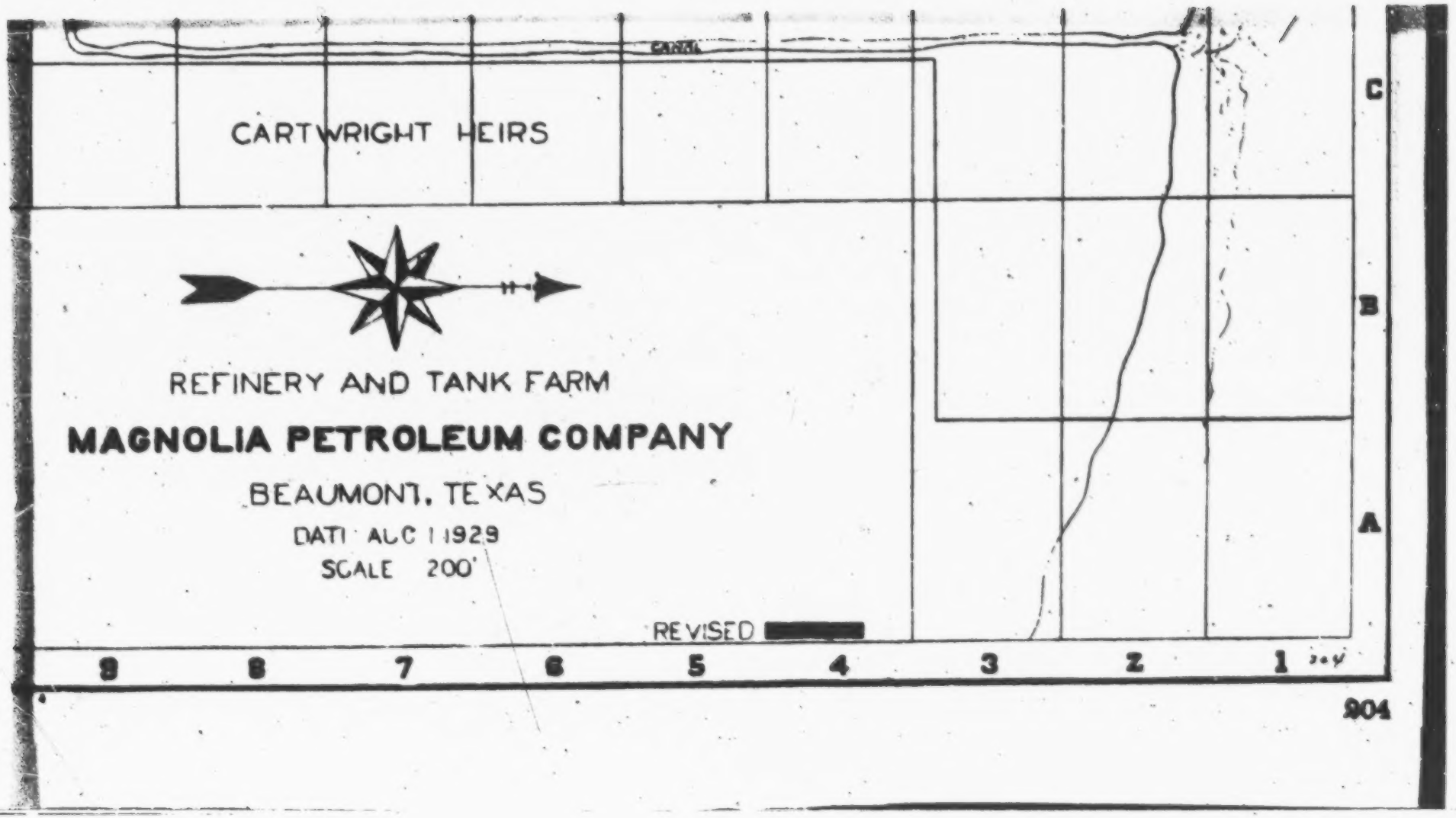
F E D C

CANAL

CARTWRIGHT HEIRS


D. W. C.
TIENWESTEN
DURNEE
L. GLADITCH
WASHINGTON CO. R.R.
C. GOODRICH
D. WALTMAN
R. HALE
J. SWITZER
FREELING
TON
J. THOMAS
D. H. BURROUGH
H. B. PRENTIS
JOHN HART
GALLAHAN
S. E. VINCE
Allen Estate
W. L.
PASADENA
HOUSTON TEXAS
SOUTH HOUSTON
THOS O'NEAL
JAMES
M. T. RY.
T. H. R.
Industry Tracks


RIVER
SMITHS ISLAND
M.P.CO
14
13
12
11
10


CANAL
CARTWRIGHT HEIRS
C
B
A
REFINERY AND TANK FARM
MAGNOLIA PETROLEUM COMPANY
BEAUMONT, TEXAS
DATI ALC 1929
SCALE 200'
REVISED
9 8 7 6 5 4 3 2 1
904

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PAGE

ered, and we both should be careful not to give or receive an allowance which could not be justified by the cost of the service.

I might also say that it is desirable that we should pay your company the same as we pay other industries at Port Arthur which might perform similar service for our company, and have made a similar proposition to them.

Will you not kindly give the matter consideration and advise if the amount named is acceptable so that tariffs may be issued covering the same; No allowance to be made until tariffs are effective.

Our operating officials feel that to pay any more than the amount suggested would cause them to give serious consideration to handling the business with our own power to and from your loading and unloading facilities.

Yours truly,

(Signed) J. F. HOLDEN.

B/C. Mr. J. A. EDSON.
Mr. C. E. JOHNSTON.
Mr. G. P. WILLIAMS.
Mr. G. H. MUCKLEY.
Mr. H. A. WEAVER.
Mr. J. O. HAMILTON.
Mr. E. H. HOLDEN.

Copied from file 2692 in office of H. A. Weaver, K. C. S., in Kansas City, Mo. W. S. R.

815-T *Exhibit A-73*

HOUSTON, TEXAS, *October 28, 1922.*

INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

GENTLEMEN: At Chaison, Texas, a station on the line of the Texas & New Orleans Railroad Company, the Magnolia Petroleum Company has an oil refining plant. The Texas & New Orleans Railroad Company operates freight trains through to said station, handling cars to and from team tracks and loading and unloading tracks of other industries. It has for some time, however, been the practice of the said Railroad Company to shunt on to the track of the Magnolia Petroleum Company at the switch-head all inbound cars for said Company and to pick up at that point all outbound cars from shipper's plant, and shipper has operated its own switch engine which has hauled cars to and from the switch-head to loading and unloading tracks of shipper's plant.

This service, it is admitted, is a service which should be performed by the Railroad Company, and the Magnolia Petroleum Company, finding the performance of such service to be growing burdensome with increasing traffic, has formally requested the Texas & New Orleans Railroad Company to perform such spotting service. The Railroad Company, after a survey of the situation admits that the

service requested is one which it is the duty of carrier to perform, but, as a matter of convenience to both parties, and in order to avoid delays to trains of the Railroad Company which would be occasioned by the performance of this spotting service by said trains, has proposed to Magnolia Petroleum Company that shipper continue to perform said spotting service for the Railroad Company and accept compensation therefor from said carrier at the rate of Ten Dollars ($10) per switch engine hour, upon the basis of a daily requirement of two switch engine hours for such service, it having been determined after somewhat comprehensive tests that Ten Dollars ($10) per hour is less than the actual cost of operating a switch engine in this service and that the time required for a switch engine to perform this service is somewhat in excess of two hours per day.

This proposal is acceptable to the shipper, but before entering into an agreement upon the basis mentioned, we wish to be advised by the Commission whether or not such an agreement would be objectionable or in any sense illegal.

Yours truly,

MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas,
By W. M. MADDOX,
Assistant Traffic Manager.

We entertain no doubt of the legality of the proposed arrangement, but, as the Magnolia Petroleum Company desires to obtain in an informal way the view of the Commission on the matter, we join that Company in requesting the opinion of the Commission.

TEXAS & NEW ORLEANS RAILROAD CO.,
Houston, Texas.
By BAKER, BOTTS, PARKER & GARWOOD,
General Attorneys.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, Nov. 11, 1922.

15708

MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas.

GENTLEMEN: The Commission has received your letter of October 28, regarding the basis for adjusting accounts between your company and the Texas & New Orleans Railroad Company for service proposed to be performed by your company in moving carloads of freight that under the transportation conditions should be moved to placement by the railroad at your plant at Chaison, Texas.

The basis proposed is compensation to your company at the rate of $10 per engine hour for this service. Practically all the cases the Commission has had to deal with involving compensation to

shippers by carriers for the performance of switching service have been on the basis of a charge per car and they are represented by U. S. Cast Iron Pipe & Foundry Co. v. Director General, 59 I. C. C., 59, and Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29.

If the proposed basis of $10 per engine hour as compensation to your company for service that otherwise should be performed by the railroad represents a reasonable allowance for the service, it is not seen that that basis would result in a violation of the law. This statement is predicated on the idea that the allowance will be represented by actual service performed during the period covered by such allowance. It will be necessary that the provision for the allowance be published in a tariff and filed with the Commission. Your attention is invited to the enclosed copy of conference ruling 360.

Respectfully,

G. B. McGINTY,
Secretary.

Encl.

Copy to: BAKER, BOTTS, PARKER & GARWOOD, *General Attorneys, Texas & New Orleans R. R. Co., Houston, Texas.*

815-U *Exhibit A-74*

STATE OF TEXAS,
RAILROAD COMMISSION OF TEXAS,
Austin, Texas, April 23, 1926.

Circular No. 6911. Rate Ruling. Docket No. 2302. Switching allowances to Industries. Investigation respecting legality, etc., of.

Through the above numbered and entitled cause, covered by notices given under Circulars Nos. 6152 and 6863, issued March 13, 1924, and March 1, 1926, respectively, the Commission has conducted investigations into the question of the advisability and legality of carriers' existing practices of making allowances, commonly known as Switching Allowances, to industries in this State as compensation, to such industries, for service performed by such industries of switching carload freight, on which intrastate line haul transportation has been or will be performed between loading and unloading tracks at the plants of such industries, on the one hand, and plant gates or track connection in the station yards of such carriers, on the other hand; such switching service performed by the industry with compensation therefor paid by the railway company, being in lieu of the performance of such service by the railway company as provided for by orders of this Commission requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks.

In connection with these investigations all Texas carriers were called upon to, at the hearings, give reference to all tariffs and

customs now current covering or providing for switching allowances to industries, and also to produce evidence showing the exact or approximate per car cost to the industry of the switching service performed by it, or such other facts or conditions as might be, by the carrier, considered as a justification for the making of switching allowances in all cases where, as shown by tariff or custom, the same are now made.

Pursuant to the call made, the evidence presented at the hearing developed the fact that switching service generally on Texas intrastate traffic, to and from industries whose plants are located on industry tracks connecting at plant gates or in station yards with the lines of hauling carriers is, pursuant to orders of this Commission, in all cases regarded as the obligation of the hauling carrier and, except in certain instances by certain lines, is performed by it. These exceptional instances cover cases where, under contract with the carrier, the switching is performed by the industry served, and as compensation therefor per car allowances, varying in amount as the extent of the service in the several instances vary, are made by the carriers. Arrangements and allowances of this character in connection with Texas intrastate traffic are relatively few, the evidence disclosing such practice by three lines of systems only and in the cases only of some five oil refineries, one rock asphalt shipping plant, and ten saw mills, with one application pending before this Commission in another proceeding for authority to make a similar allowance to a sulphur shipping plant.

Except in one instance, no authority has been previously secured from this Commission for the making of these allowances, but same are provided for in published tariffs as follows:

Oil Refineries

T. & N. O. R. R. Terminal Switching Tariff No. 717-A, R. C. T. No. 202, covering allowance of 90 cents per car to the Magnolia Petroleum Company at Chaison, Texas.

T. & N. O. R. R. Terminal Switching Tariff No. 757-A, R. C. T. No. 244, covering allowance of 90 cents per car to the Galena-Signal Oil Company at Galena, Texas.

T. & N. O. R. R. Terminal Switching Tariff No. 773, R. C. T. No. 193, covering allowance of 90 cents per car to the Texas Company and the Gulf Companies at Port Arthur and West Port Arthur, Texas, respectively.

T. & F. S. Ry. Terminal Switching Tariff No. 2860-B, R. C. T. No. 48, covering allowance of 90 cents per car to the Magnolia Petroleum Company at Chaison, Texas.

T. & F. S. Ry. Terminal Switching Tariff No. 2880, R. C. T. No. 46, covering allowance of 90 cents per car to the Gulf Companies at Port Arthur, Texas.

T. & P. S. Ry. Terminal Switching Tariff No. 2881, R. C. T. No. 47, covering allowance of 90 cents per car at Port Arthur and $1.00 per car at Port Neches, Texas, to the Texas Company.

T. & P. S. Ry. Terminal Switching Tariff No. 2902, R. C. T. No. 51, covering allowance of 90 cents per car to the Pure Oil Company at Smiths Bluff, Texas.

Saw Mills

T. & P. S. Ry. Terminal Switching Tariff No. 219-K, R. C. T. No. 169, Item 73 thereof covering allowance of $4.05 per car to the Peevey Moore Lumber Company at Bowen, Texas.

G. C. & S. F. Ry. Circular No. 2322-F, R. C. T. No. 169, covering allowance of $3.00 and $4.05 per car to various lumber mills located at Brookeland, Call Junction, Conroe, Fostoria, Jasper, Leonidas, Milvid, Pineland, and Silsbee, Texas.

Rock Asphalt Plant

G. H. & S. A. Ry. Terminal Switching Tariff No. 789-A, R. C. T. No. 243, covering allowance of $1.79 per car to the Uvalde Rock Asphalt Company at Cline, Texas. This allowance was approved by this Commission on July 7, 1925, and a request from the carrier for authority to make an increase therein is the subject of a separate proceeding.

Evidence was offered by the above mentioned carriers, and concurred in by the industries, to the effect that in the case of the allowances to each of the oil refineries extensive joint checks were made to ascertain the cost to the industry of the service performed, and the figure of such cost was in each case shown to be in excess of the allowance made; also testimony was introduced to show that the amount of the allowance was in each case less than what would be the cost to the carrier if it should itself perform the switching service. The latter was also shown to be true with respect to the allowances to saw mills, and the testimony of the mills represented was to the effect that the cost to them was in excess of the allowance received.

On the question of the legality of these allowances, if in any given case the amount thereof should be in excess of the cost to the industry of the service performed, it is very clear to this Commission that, to the extent of the excess, the giving and receiving of the allowance would be in violation of the anti-rebate law of this State; and even though the amount was less than the cost to the industry, if the carrier could itself perform the service for less than the amount of the allowance, the impropriety of the practice would be obvious. But, based upon the evidence in this case, it cannot, in the opinion of the Commission, be considered that the switching allowances, as shown above, operate to any extent as rebates to the industries, since

in every case they are shown to be less than the cost to the industry and less than what would be the cost to the carrier. Carriers are obligated to afford this switching service, but if this obligation can be fulfilled by them by the employment of the industries' facilities, which facilities the industries maintain for intraplant work and logging purposes, at a cost lower than the carrier could itself perform the work and without violating the law above referred to, we fail to recognize any illegality involved in the making of the allowances covered by this testimony, and must sanction the invoking of the economical method employed.

In view of the foregoing findings and conclusions, it is hereby ordered by the Railroad Commission of Texas that the switching allowances as provided for in the tariffs hereinbefore enumerated be and the same are hereby approved.

It is further ordered by the Commission that the following regulation, which has been found by this Commission to be reasonable and proper and which is hereby adopted and prescribed by it, be, from and after this date, observed by all railroad companies and receivers operating lines of railway in this State:

"Switching allowances to industries.—In all cases where it is the desire of any railroad company or receiver operating a line or lines of railway in the State of Texas to make any allowance or pay to any industry, whose plant is located on any industry track connecting with the line of such common carrier, any amount as compensation, to such industry, for service performed by such industry of switching carload freight, on which intrastate line haul transportation has been or will be performed, between loading or unloading tracks at the plant of such industry, on the one hand, and plant gate or track connection in the station yards of such carrier, on the other hand, or where it may be the desire to change the amount of any such existing allowance, the Railroad Commission of Texas shall be advised of such desire and its approval of such allowance or change secured prior to the making of same."

CLARENCE E. GILMORE,
Chairman.

C. V. TERRELL,
LON A. SMITH,
Commissioners.

Attest:
C. F. PETER,
Secretary.

I hereby certify that the above is a true and correct copy of Circular No. 6911, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of said Commission at the City of Austin, this the 23rd day of April 1926.

C. F. PETER, *Secretary.*

815-V *Exhibit A-75*

Cost of spotting commercial cars at Virginia Petroleum Company's Chevron refinery, June 1, 1923, to Dec. 31, 1924

Year	Commercial loads	Engine hours, commercial switching		Time per car		Cost		Average cost per car		Average cost per engine hour	
		Col. 1	Col. 2	Col. 1	Col. 2	Col. 1	Col. 2	Col. 1	Col. 2	Col. 1	Col. 2
		Hrs Min	Hrs Min	Min	Min						
1923 [1]	10,909	4,346 10	5,505 24	19.0	24.1	$12,693.21	$16,133.73	$1.16	$1.47	$2.91	$2.93
1924 [2]	11,217	1,806 10	2,434 43	9.7	13.2	11,824.80	14,757.86	1.05	1.31	6.55	6.05
	22,115	6,152 20	6,340 0			24,518.01	30,891.59	1.10	1.39		

Col. 1—Actual working time.
Col. 2—Actual working time and prorata of idle time.

[1] June 1, 1923, to and including Mar. 31, 1924.
[2] Apr. 1, 1924, to and including Dec. 31, 1924.

A larger switch engine purchased and put in service December 1924.

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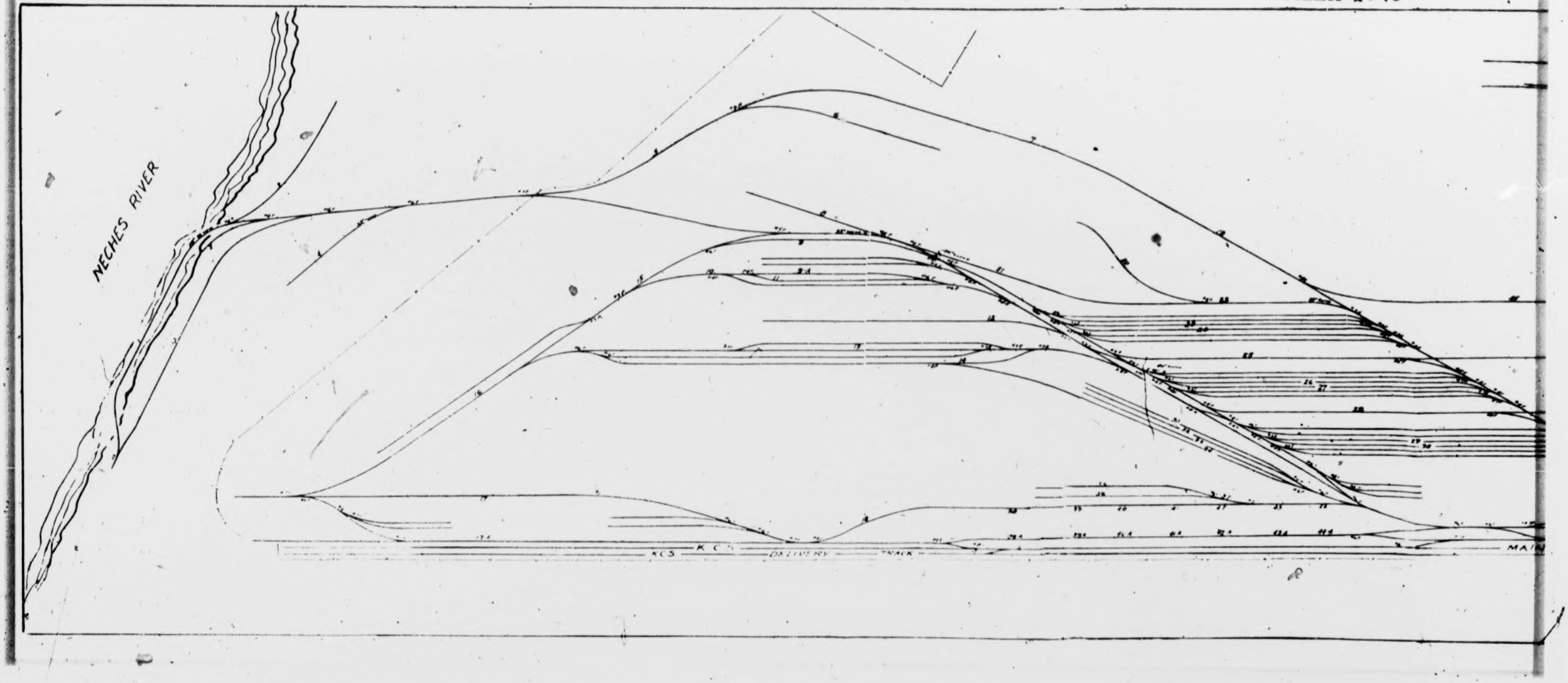

NECHES RIVER
MAIN

APPROXIMATE BEARING OF LEAD CURVES FOR TRACKS		
From Switches	Bearing of Lead Curve	Degree of Lead Curve
No. 4	1330	6° 0'
No. 5	2040	3° 0'
No. 6	2865	2° 0'
No. 7	4000	1° 30'
No. 8	5730	1° 0'

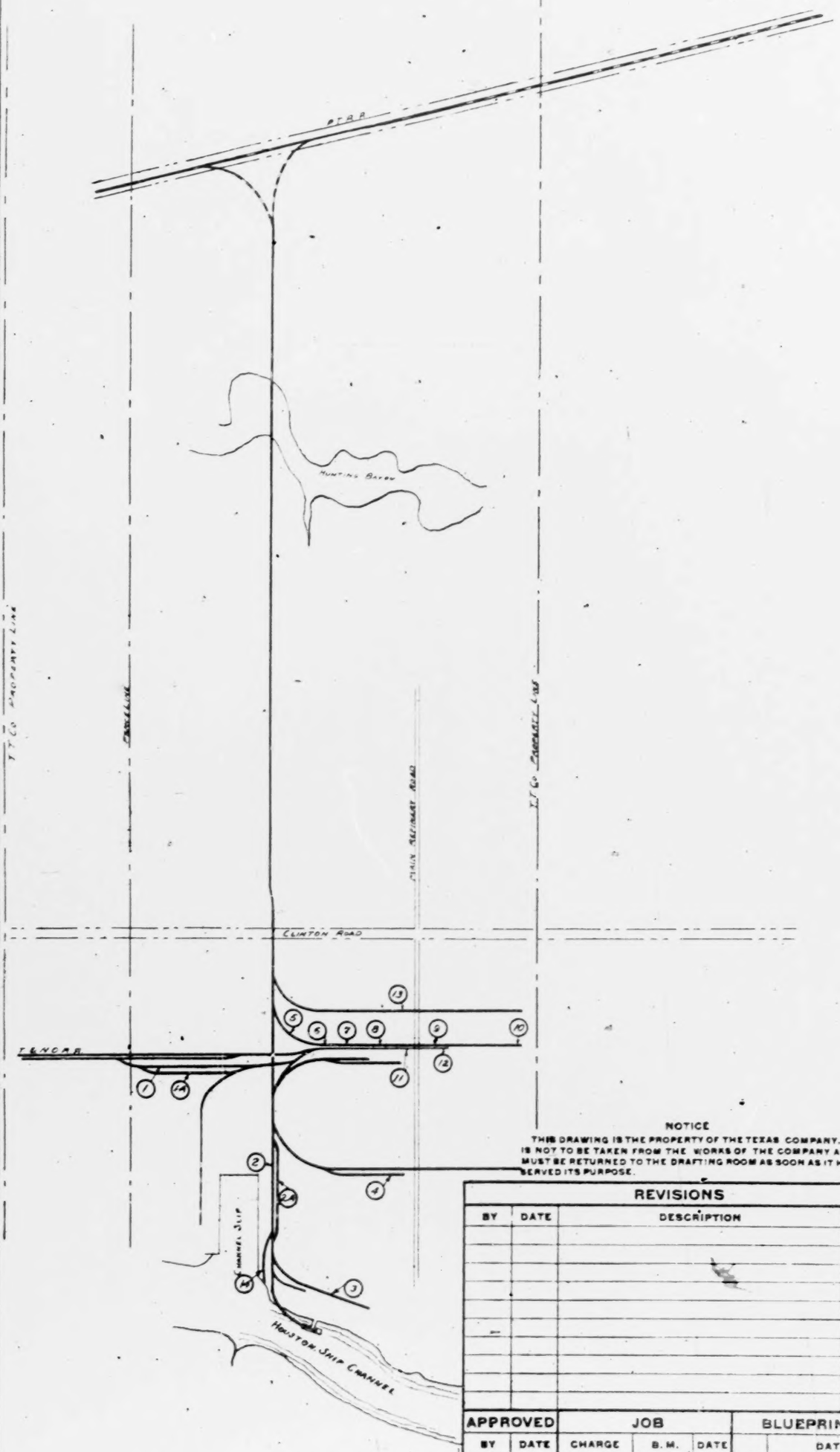
THE TEXAS COMPANY
PLAN OF TRACKS
AT
PORT NECHES WORKS
1932

N

MAIN

TRACK

APPROVED DATE 3-14-32 R-1955



NOTICE

THIS DRAWING IS THE PROPERTY OF THE TEXAS COMPANY. IT IS NOT TO BE TAKEN FROM THE WORKS OF THE COMPANY AND MUST BE RETURNED TO THE DRAFTING ROOM AS SOON AS IT HAS SERVED ITS PURPOSE.

REVISIONS			
BY	DATE	DESCRIPTION	SYMBOL

APPROVED		JOB			BLUEPRINTS	
BY	DATE	CHARGE	B.M.	DATE	TO	DATE

THE TEXAS COMPANY

EXHIBIT A 80

REFERENCE DRAWINGS

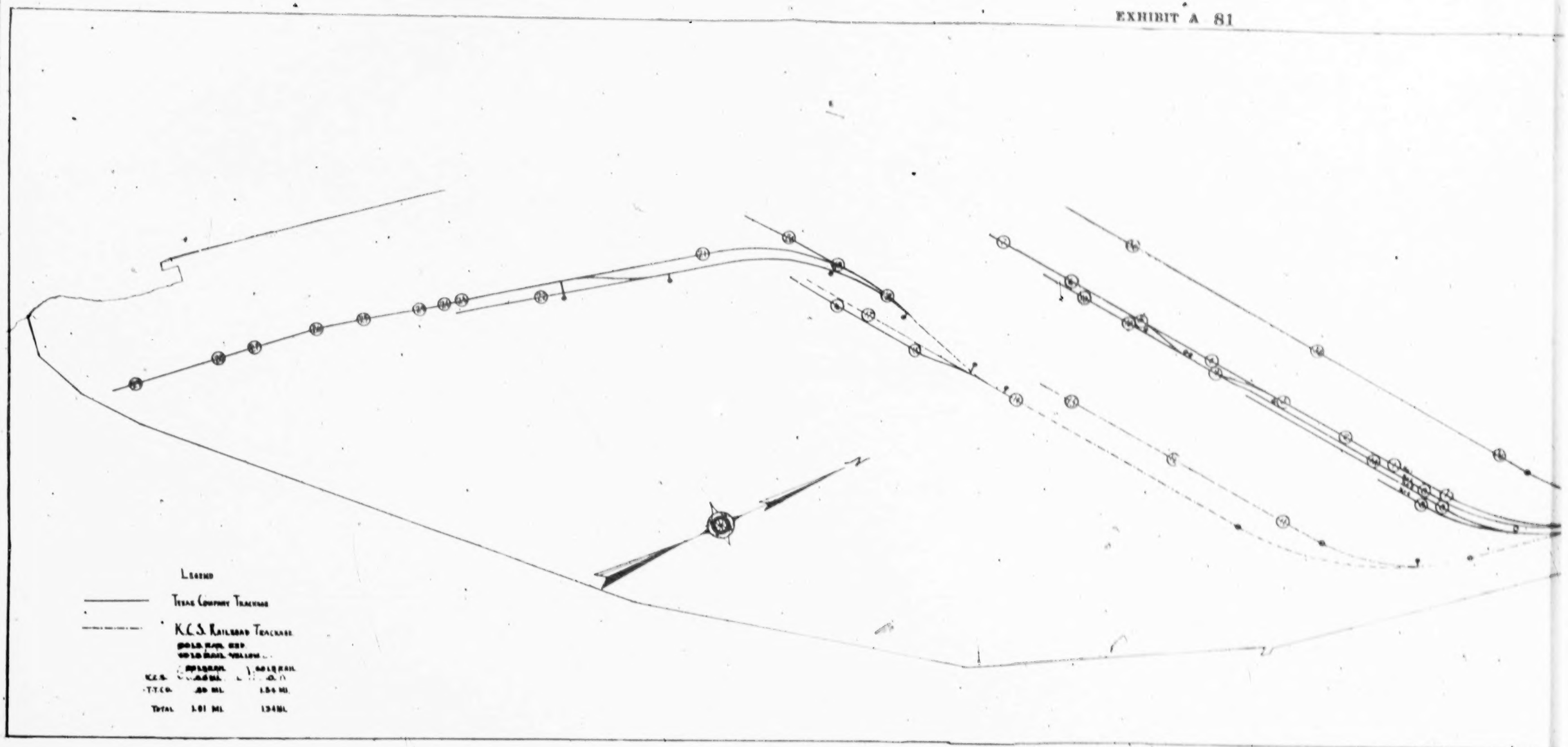
THE TEXAS COMPANY

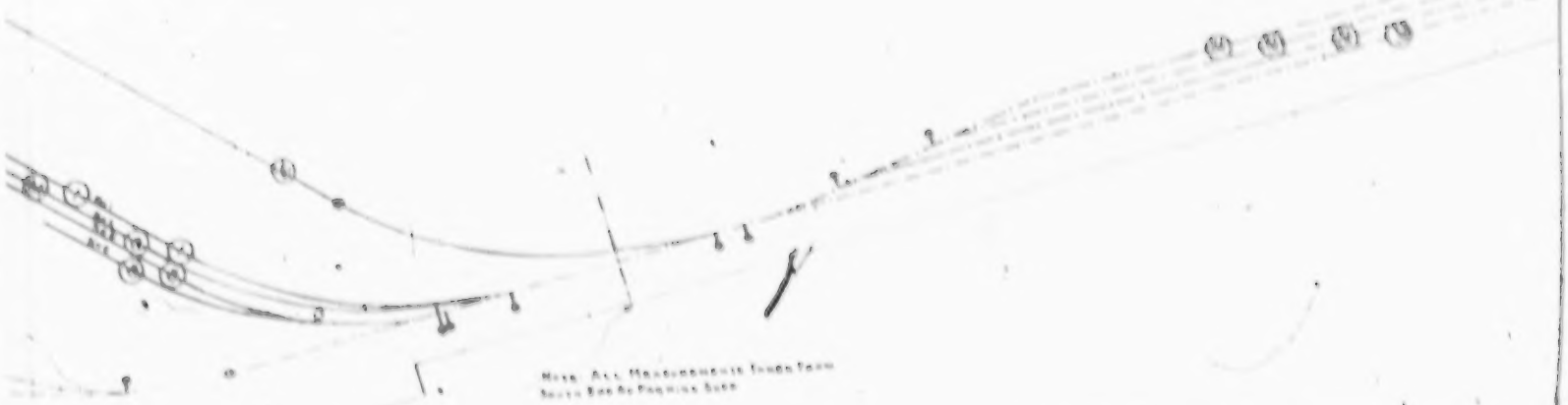
REFINING DEPARTMENT

HOUSTON WORKS

PLANT TRACHAGE

INITIALS	DATES	SCALE 1 IN = 500'
DRAWN BY		NUMBER ASSIGNED AND TRACING RECORDS DETAILS — DATE
TRACED BY D L J	4/4/32	
CHECKED BY		PRINT NO
TRACING MADE FROM DRAWING NO	3-29-74	SKETCH


Legend
Texas Company Trackage
K.C.S. Railroad Trackage
K.C.S.
T.T.C.O.
Total



THE TEXAS COMPANY

REFINING DEPARTMENT

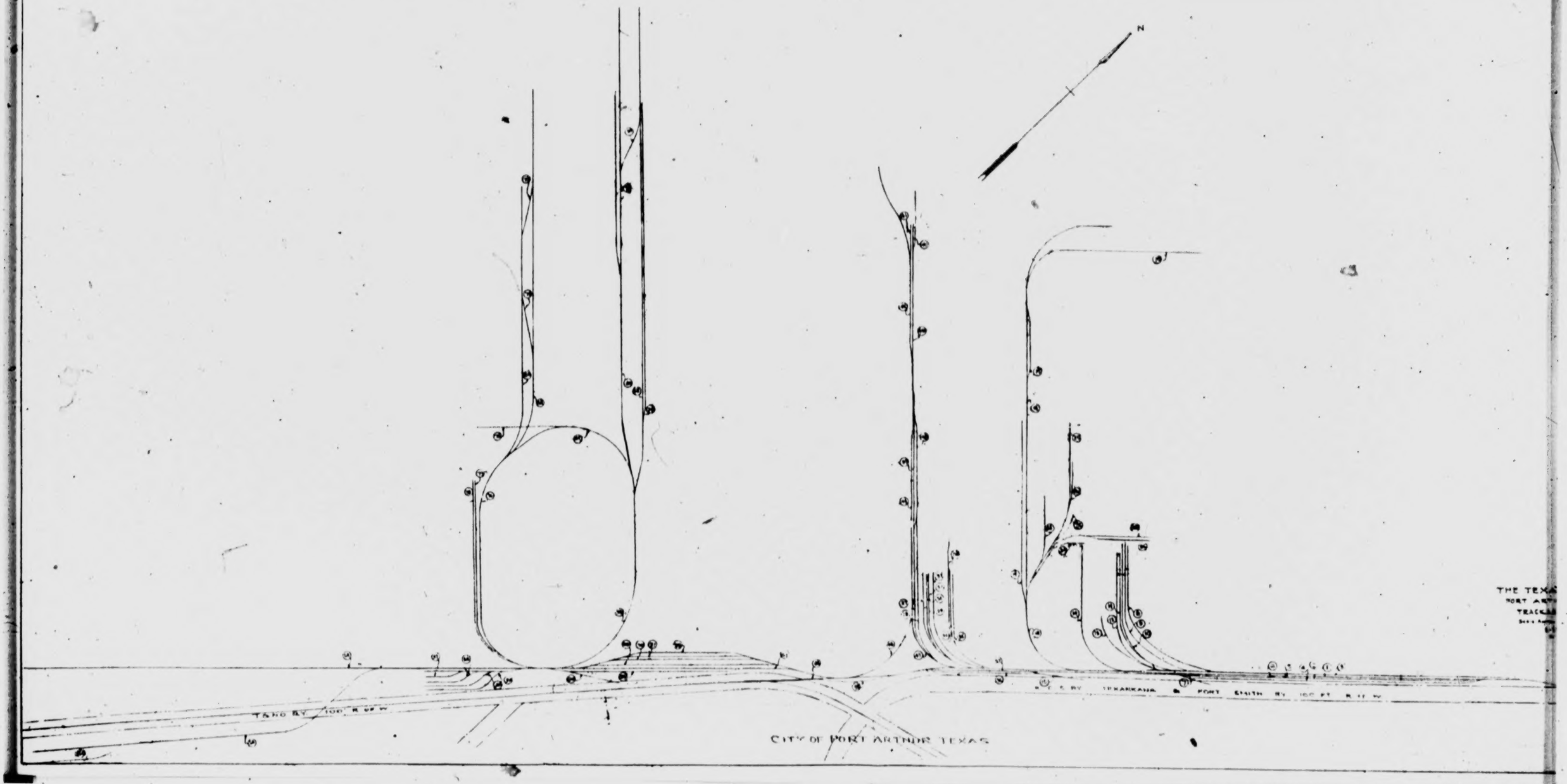
CASE & PACKAGE DIVISION

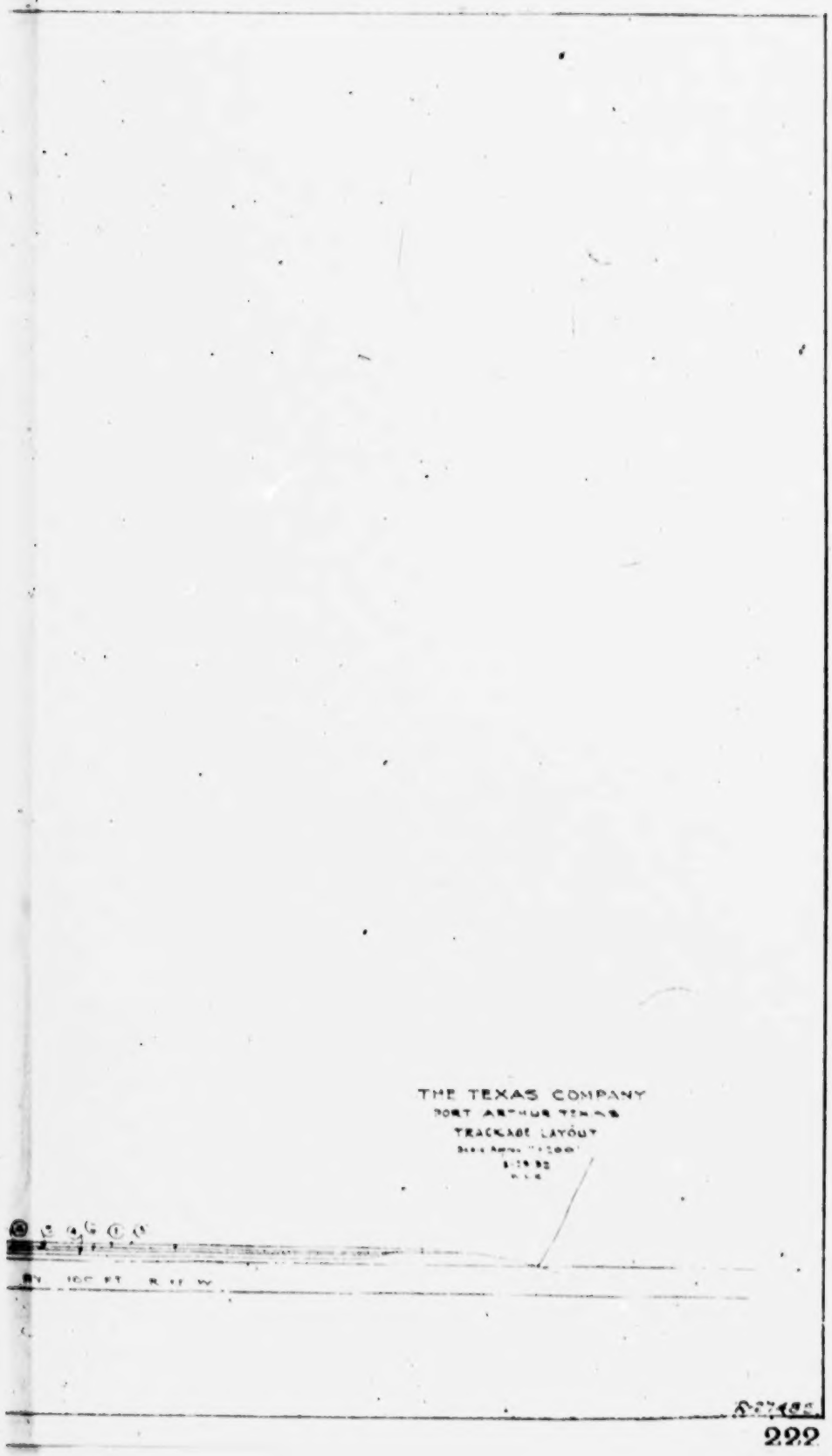
Map

Showing Trackage Port Arthur Terminal

SCALE 1" = 100'	DATE 3-19-54	REVISED		
DRAWN BY	TRACED BY	FILE	PRINT NO	DRAWING NO
LPB	L			G 330

EXHIBIT A 82




THE TEXAS COMPANY
PORT ARTHUR TEXAS
TRACKAGE LAYOUT

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815–X *Exhibit A–77*

Estimated cost of commercial switching at Magnolia Petroleum Company's Chaison refinery

1930

	Engine #1	Engine #2	Engine #3	Total	Average cost per car
Total commercial cars..... 24981					
Total expense	$26,913.08	$11,987.05	$26,856.55		
1929 commercial time	16½%	14%	84%		
Commercial cost	$3,440.65	$1,678.19	$21,856.55	$26,975.39	$1.08

1931

	Engine #1	Engine #2	Engine #3	Total	Average cost per car
Total commercial cars..... 15814					
Total expense	$20,039.98	$6,530.86	$20,995.37		
Percent commercial time 1929	16½%	14%	84%		
Commercial cost	$3,306.59	$914.32	$17,610.91	$21,831.82	$1.38

815–CC *Exhibit A–83*

[Copy]

STATE OF TEXAS,
RAILROAD COMMISSION OF TEXAS,
Austin, Texas, August 7, 1931.

Special authority

I. G. N. R. R. Co. Application No. 1311. Authority No. 915.

M. K. T. R. R. Co. of Texas Application No. 1451. Authority No. 761.

B. R. I. R. R. Co. Application No. 161. Authority No. 107.

G. C. & S. F. Ry. Co. Application No. 944. Authority No. 659.

In approval of applications numbers, 1311 of the International-Great Northern Railroad Company (presented on behalf of that Company, the Beaumont, Sour Lake and Western Railway Company, St. Louis, Brownsville and Mexico Railway Company and the Sugar Land Railway Company), 1451 of the Missouri-Kansas-Texas Railroad Company of Texas, 161 of the Burlington-Rock Island Railroad Company and 944 of the Gulf, Colorado and Santa Fe Railway Company, it is ordered by the Railroad Commission of Texas that authority be and the same is hereby granted to each of the railway or railroad companies, as above named, to pay to the Texas Company an allowance of ninety (90) cents per car as compensation for service performed by the Texas Company, in switching carload freight between loading or unloading tracks at the plant of the Texas Company, on the one hand, and track connection with the Port Terminal Railroad Association of Houston, at Houston, Texas, on the other

hand; such switching service performed by the Texas Company, with compensation therefor paid by the Railway or Railroad companies named, being in lieu of the performance of such service by the Port Terminal Railroad Association of Houston for account of the said railway or railroad companies, as provided for by orders of this Commission requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks. The authority herein granted shall apply separately for each of the railway or railroad companies named, on cars received from or delivered to the Texas Company, at Houston, by the Port Terminal Railroad Association of Houston, for account of each of the said railway or railroad companies.

Effective July 30, 1931.

RAILROAD COMMISSION OF TEXAS,
By C. V. TERRELL,
Chairman,
LON A. SMITH,
Commissioners.

Attest:
C. F. PEFFER, *Secretary*.
[SEAL]

815-DD

Exhibit A-84

[Copy]

ON LINE,
April 30, 1923.

MR. WM. JERVIS,
Manager, Traffic Department, The Texas Company,
Whitehall Building, New York City, New York.

DEAR MR. JERVIS: I have just learned that Southern Pacific Company has negotiated with Magnolia Petroleum Company at Chaison, Texas, whereby Southern Pacific Company will allow Magnolia Petroleum Company an allowance per loaded car for all carload traffic handled to or received from Magnolia Petroleum Company interchanged just outside of the plant of the Magnolia Petroleum Company. The allowance is arrived at by taking the business of the Magnolia Petroleum Company handled over a certain period on which that company performs the service from the interchange track to the loading and unloading facilities direct, it being the purpose of Southern Pacific Company to compensate Magnolia Petroleum Company for the actual cost of such service. The arrangement does not contemplate any payment for empty cars handled in a similar manner, nor for any intra-plant service which might be performed.

We feel that we will be compelled to meet the action of Southern Pacific Company at Chaison and will want to treat your company equally as well as we do the Magnolia Petroleum Company although

the service might not be exactly the same in both instances, and the service which your company might perform for us might have to be computed on what we could agree on as the cost of same by some fair method, you realizing that to do anything more than to pay the cost might be considered illegal.

You will remember in discussing this matter before, when the question was up of our switching rates between the plants of your company in the vicinity of Port Arthur, you did not think well of receiving an allowance but rather preferred that the switching rates be reduced which we were unable to accomplish because of the decision of the Railroad Commission of Texas; consequently, I am giving you the above information so that if you feel like opening negotiations for some allowance we can get together and work it out.

From information received, Magnolia Petroleum Company has had this matter under negotiation with Southern Pacific Company for some months and in order to satisfy themselves an allowance could be accepted for the service which they perform, presented the question to the Interstate Commerce Commission, which body, through its Secretary, makes this statement:

"If the proposed basis suggested as compensation to your company for service that otherwise should be performed by the railroad represents a reasonable allowance for the service, it is not seen that that basis would result in a violation of the law. This statement is predicated on the idea that the allowance will be represented by actual service performed during the period covered by the allowance. It will be necessary that the provision for the allowance be published in a tariff and filed with the Commission."

While apparently the granting of this allowance may be legal in the eyes of the Interstate Commerce Commission, the question arises as to how the Railroad Commission of Texas would view it on intrastate traffic; it being our understanding that heretofore that body has refused to grant any allowance to unincorporated railroads.

Yours very truly,

(Signed) J. F. HOLDEN.

815-EE *Exhibit A-85*

Cost of switching carload freight between loading and unloading tracks of the Texas Company and track connections with the T. & P. R. at Port Arthur Terminal, 5-2-32 to 5-7-32, Inc.

	Number	Percent of total
	Hrs. Min.	
Engine hours switching to and from T. & P. R.	28 45	59.89
Engine hours switching intra-plant	19 15	40.11
Total engine hours actual time	48 0	100.00
Engine hours dead time	0 0	
Engine hours undergoing repairs	0 0	
Total engine hours	48 0	

Cost of switching carload freight—Continued

	Loaded	Empty
Cars received from T. & F. S	130	0
Cars delivered to T. & F. S	24	147
Cars moved intra-plant	86	39
Total	240	186

	T. & F. S.	T. T. Co.	Total
Cost prorated according to engine-hours:			
Engine No. 5:			
Purchase price $12,358.00			
Date of purchase July 1910			
Depreciation 4.5% per annum based on original cost	$5.47	$3.67	$9.14
Interest on investment 5.5% per annum based on original cost	6.69	4.48	11.17
Taxes per annum, based on last year's assessment	.44	.30	.74
Repairs (classified)	8.94	5.98	14.92
Repairs (running)			
Fuel	21.08	14.12	35.20
Water	7.53	5.05	12.58
Lubricants and other enginehouse expense			
Wages of hostlers, engineers, and switchmen	86.40	57.80	144.26
Supervision 15%	20.48	13.72	34.20
Total	$157.03	$105.18	$262.21

Cost per car switching to and from T. & F. S. $0.5217
Cost per loaded car switching to and from T. & F. S. 1.0197

HEB WSH 5-12-32. RA JOW JMF. GE.

815 FF

Exhibit A-86

Cost of switching carload freight between loading and unloading tracks of the Texas Company and track connections with the T. & F. S. at Port Neches works, 5-2-32 to 5-7-32, inc.

	No.	Percent of total
	Hrs. Min.	
Engine hours switching to and from T. & F. S.	28 41	23.98
Engine hours switching intra-plant	90 55	76.02
Total engine hours actual time	119 36	100.00
Engine hours dead time	0 0	
Engine hours undergoing repairs	0 24	
Total engine hours	120 0	

	Loaded	Empty
Cars received from T. & F. S.	26	62
Cars delivered to T. & F. S.	60	2
Cars moved intra-plant	138	186
Total	124	150

1 Does not include industrial cars.

Cost of switching carload freight—Continued

	T. & F.	T. T. Co.	Total
Cost prorated according to engine hours:			
Engine No. 4:			
Purchase price $3,500.00			
Date of purchase April 1919			
Engine No. 7:			
Purchase price $3,358.71			
Date of purchase June 1919			
Engine No. 9:			
Purchase price $10,347.94			
Date of purchase August 1918			
Depreciation 4.5 % per annum based on original cost	$3.05	$9.67	$12.72
Interest on investment 5.5 % per annum, based on original cost	3.73	11.83	15.56
Taxes per annum, based on last year's assessment	.27	.85	1.12
Repairs (classified)	18.47	58.55	77.02
Repairs (running)	.57	1.82	2.39
Fuel	8.28	26.25	34.53
Water	3.82	12.13	15.95
Lubricants and other enginehouse expense	1.08	3.44	4.52
Wages of hostlers, engineers, and switchmen	43.09	136.59	179.68
Supervision, 15 %	12.35	39.17	51.52
Total	$94.71	$300.30	$396.01

Cost per car switching to and from T. & F. S.	$0.6314
Cost per loaded car switching to and from T. & F. S.	1.1013

HEB WSH 5-12-32: RA JOW JMF. CE.

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Exhibit A–87

Cost of switching carload freight between loading and unloading tracks of the Texas Company and track connections with T. & N. O. and P. T. R. R. Assn. at Houston works, 5–2–32 to 5–7–32, inc.

	No.	Percent of total
	Hrs. Min.	
Engine hours switching to and from T. & N. O.	8 40	30.28
Engine hours switching to and from P. T. R. R.	14 38	50.26
Engine hours switching intra plant	5 40	19.46
Total engine hours actual time	29 7	100.00
Engine hours dead time	0 53	
Engine hours undergoing repairs	0 0	
Total engine hours	30 0	

	Loaded	Empty
Cars received from T. & N. O.	4	33
Cars delivered to T. & N. O.	28	1
Cars received from P. T. R. R. A.	1	59
Cars delivered to P. T. R. R. A.	57	1
Cars moved intra plant	4	13
Total	88	107

Cost of switching carload freight—Continued

	T. A. N. O. and P. T. R. R. A.	T. P. Co.	Total
Cost prorated according to engine hours			
Engine No. 1			
Purchase price $5,000.00			
Date of purchase 1924			
Depreciation 4.5% per annum based on original cost	$2.08	$0.72	$2.80
Interest on investment 5.5% per annum, based on original cost	3.04	.88	4.32
Taxes per annum, based on last year's assessment	.25	.06	.31
Repairs (classified)	6.10	1.50	7.60
Repairs (running)	.08	.02	.08
Fuel	17.27	4.28	22.80
Water	2.64	.64	3.28
Lubricants and other engine-house expense	.61	.14	.75
Wages of hostlers, enginer, and switchmen	32.74	9.11	46.85
Supervision, 15%	10.72	2.60	13.32
Total	$82.60	$19.95	$102.55
Cost per loaded car railroad switching			$0.0494

HER-WSH 5-12-32.

815-H

Exhibit A-93

Summary of expense and income, Ranltown refinery, switching expense, last 6 months, 1931

Total Hours of Operation	1,557.16	
Assigned to Plant Service	406.33	26.094%
Assigned to Railroad Service	1,150.83	73.906%

	Expense		Credits		Deficit	
	Plant 26.094%	Railroad 73.90[illegible]%	Plant actual	Railroad actual	Plant	Railroad
July	$884.03	$2,503.82	$228.00	$545.50	$656.03	$1,958.32
August	831.98	2,356.43	432.00	501.00	399.98	1,794.83
September	610.00	1,720.39	336.00	633.00	274.00	1,087.39
October	1,430.57	4,205.25	284.00	579.00	1,093.57	3,180.18
November	1,367.74	3,873.84	156.00	621.00	1,211.74	3,252.84
December	695.21	1,960.08	144.00	829.50	551.21	1,130.58
Total	5,719.53	16,198.31	1,580.00	3,761.00	4,139.53	12,437.31
Grand total	$21,917.84		$5,321.00		$16,589.84	

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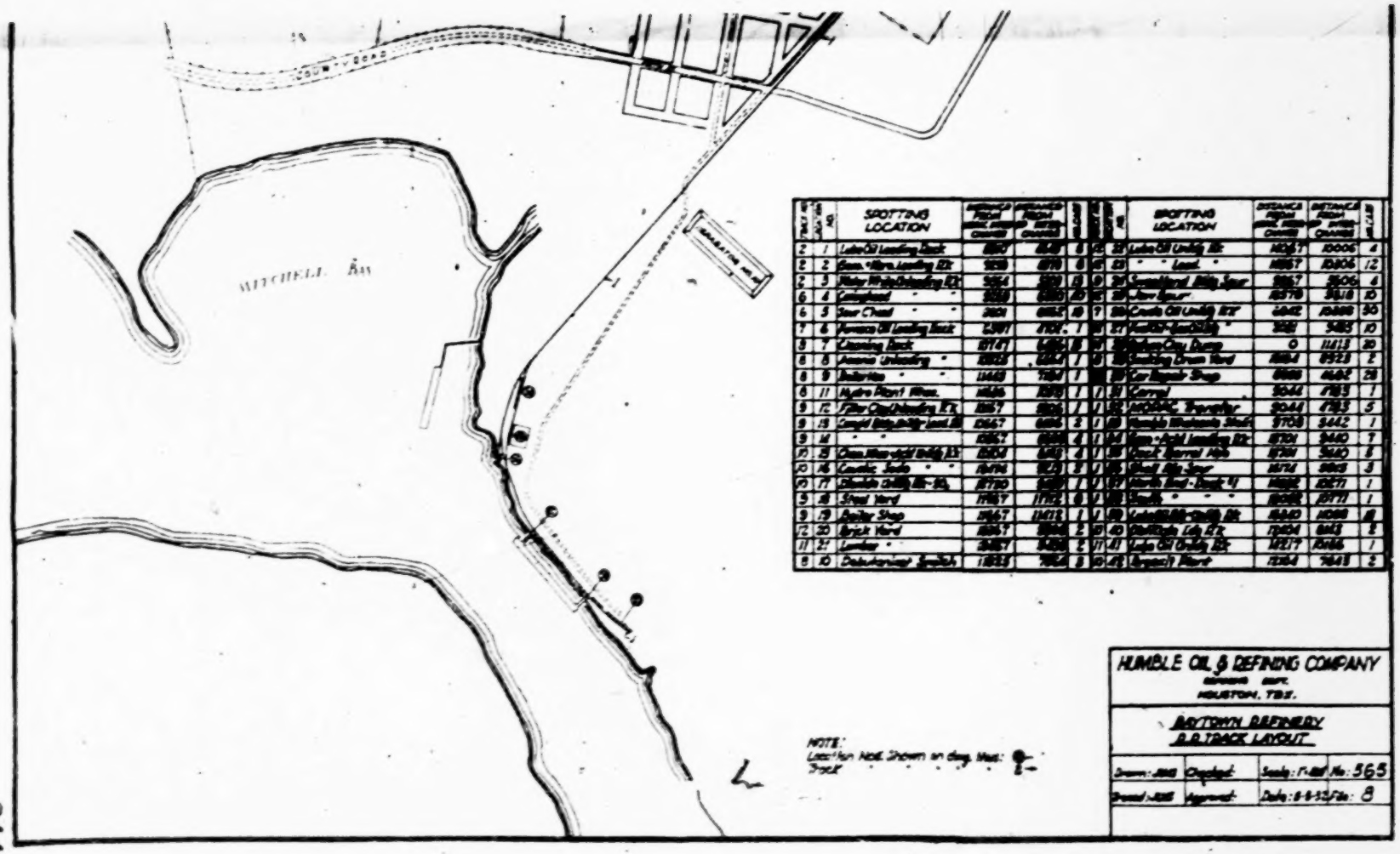
EXHIBIT A 92


MITCHELL BAY
SPOTTING LOCATION
NOTE:
Location Not Shown on drg. Visit:
Track
HUMBLE OIL & REFINING COMPANY
HOUSTON, TEX.
BAYTOWN REFINERY
R.R. TRACK LAYOUT
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Operating costs, switch engines, Baytown refinery, last 6 months, 1931.

	1	2	3	4	5	6	7		8	9	10	11	12	13	14
	Hours operated	Labor operating	Night hostler	Yardmaster and assistant	Supervision	Clerk-hire	Fuel		Works expense	Repairs	Depreciation	Interest	Taxes	Insurance	Total
							Gallons	Amount							
July	361.66	$1,571.90	$191.97	$208.51	$197.24	$203.38	16,639	$252.16	$166.78	$135.08	$169.02	$253.53	$36.34	$1.94	$3,587.85
August	339.00	1,499.18	190.41	160.83	188.04	203.44	13,678	189.77	145.37	120.54	169.02	253.53	36.34	1.94	3,188.41
September	220.00	987.39	79.52	139.53	120.64	203.40	11,833	140.62	79.90	142.57	163.06	245.08	36.34	1.94	2,339.99
October	216.00	964.07	73.47	91.54	112.91	203.42	11,823	132.64	85.24	2,971.18	169.02	253.53	36.35	1.95	5,095.32
November	199.30	893.06	75.63	91.50	106.02	203.32	8,767	92.68	102.22	3,230.73	163.06	245.08	36.34	1.94	5,241.58
December	224.00	1,000.68	124.69	91.67	121.70	203.34	11,834	123.10	98.09	440.17	169.02	253.53	36.35	1.95	2,664.29
Total	1,557.16	$6,916.28	$735.69	$813.58	$846.55	$1,220.30	74,574	$930.97	$677.60	$7,040.27	$1,002.20	$1,504.28	$218.06	$11.66	$21,917.44

1 Hours of engine operation during period.
2 Direct operating labor charges plus compensation insurance as of Exhibit A.
3 Engine hostler and helper plus compensation insurance as of Exhibit B.
4 Yardmaster and assistant labor charges plus compensation insurance as of Exhibit C.
5 Supervision charge, 10% of columns 2, 3, and 4.
6 Clerk hire plus compensation insurance as of Exhibit D.
7 Fuel oil consumed by engines, average price 1.246384¢ per gallon.
8 Engines supplies, wastes, tools, etc., as of Exhibit E, 1 to 6 inclusive.
9 Repairs, material and labor incidental thereto as of Exhibit F, 1 to 6 inclusive.
10 Depreciation @ 4% per annum on value of $49,712.27.
11 Interest @ 6% per annum on value of $40,712.27.
12 Taxes estimated on engine value.
13 Boiler insurance premium, monthly apportionment.

Exhibit A.—Switching engines, last six months 1931—labor operating

	Hours	Rate	Amount	
July:				
2 engineers	362.00	$1.09	$394.58	
3 firemen	359.99	.89	320.41	
6 brakemen	1,025.68	.81	83.081	
Compensation insurance			26.10	
				$1,571.90
August:				
2 engineers	336.00	1.09	366.24	
3 firemen	336.00	.8755	294.17	
6 brakemen	1,004.17	.81	813.38	
Compensation insurance			25.39	
				1,499.18
September:				
1 engineer	220.65	1.09	240.53	
1 fireman	217.82	.8751	190.61	
4 brakemen	666.35	.81	539.75	
Compensation insurance			16.50	
				987.39
October:				
1 engineer	216.00	1.09	235.44	
1 fireman	216.00	.875	189.00	
3 brakemen	646.17	.81	523.40	
Compensation insurance			16.23	
				964.07
November:				
1 engineer	199.83	1.09	217.82	
1 fireman	200.34	.875	175.29	
3 brakemen	599.17	.81	485.33	
Compensation insurance			14.62	
				893.06
December:				
1 engineer	224.00	1.09	244.16	
1 fireman	224.00	.875	196.00	
3 brakemen	671.67	.81	544.04	
Compensation insurance			16.48	
				1,000.68
Total				6,916.28

Exhibit B.—Switch engines—last six months, 1931.—Night hostler and helper

	Hours	Rate	Amount	
July:				
1 hostler	164.00	$0.77	$126.27	
1 hostler helper	110.00	.5683	62.51	
Compensation Insurance			3.19	
				$191.97
August:				
1 hostler	178.00	.73	129.94	
1 hostler helper	14.00	.625	8.74	
1 hostler helper	97.00	.50	48.50	
Compensation insurance			3.23	
				190.41
September:				
1 hostler	103.00	.73	75.19	
1 hostler helper	6.00	.50	3.00	
Compensation insurance			1.33	
				79.52
October:				
1 hostler	98.00	.73	71.54	
1 hostler helper	2.00	.35	.70	
Compensation insurance			1.23	
				73.47
November:				
1 hostler	100.00	.73	73.00	
1 hostler helper	4.00	.35	1.40	
Compensation insurance			1.23	
				75.63
December:				
1 hostler	168.00	.73	122.64	
Compensation insurance			2.05	
				124.69
Total				735.69

Exhibit C.—Switch engines—last six months 1931—yardmaster and assistant

			Amount	
July:				
Yardmaster	Salary apportionment		$883.45	
Yardmaster assistant	$152.00	$0.80	121.60	
Compensation insurance			3.46	
				$208.51
August:				
Yardmaster	Salary apportionment		90.00	
Yardmaster assistant	$122.00	$0.80	97.60	
Compensation insurance			3.23	
				190.83
September:				
Yardmaster	Salary apportionment		90.00	
Yardmaster assistant	$59.00	$0.80	47.20	
Compensation insurance			2.33	
				139.53
October:				
Yardmaster	Salary apportionment		90.00	
Compensation insurance			1.54	
				91.54
November:				
Yardmaster	Salary apportionment		90.00	
Compensation insurance			1.50	
				91.50
December:				
Yardmaster	Salary apportionment		90.00	
Compensation insurance			1.67	
				91.67
Total				813.58

Exhibit D.—Switch engines—last six months 1931—clerk hire

			Amount	
July:				
1 office clerk	Salary apportionment		$100.00	
1 office clerk	"	"	100.00	
Compensation insurance			3.38	
				$203.38
August:				
1 office clerk	Salary apportionment		100.00	
1 office clerk	"	"	100.00	
Compensation insurance			3.44	
				203.44
September:				
1 office clerk	Salary apportionment		100.00	
1 office clerk	"	"	100.00	
Compensation insurance			3.40	
				203.40
October:				
1 office clerk	Salary apportionment		100.00	
1 office clerk	"	"	100.00	
Compensation insurance			3.42	
				203.42
November:				
1 office clerk	Salary apportionment		100.00	
1 office clerk	"	"	100.00	
Compensation insurance			3.32	
				203.32
December:				
1 office clerk	Salary apportionment		100.00	
1 office clerk	"	"	100.00	
Compensation insurance			3.34	
				203.34
Total				$1,220.30

Exhibit F–1.—Switch engines—last six months 1931—works expense

July	Hours	Rate	Amount	
Car repair department	1.33	$2.4511	$3.26	
Miscellaneous department	1.00	.7600	.76	
				$4.02
Trucking, No. 2633	1.67	.7485	1.25	1.25
Air, 828 M cu. ft. @		.050379	41.72	
Electricity, 40 k. w. h. @		.007524	.30	
Ice, 1,375 lbs. @		.303053	4.17	
Steam, 80 M lbs. @		.280000	22.40	
Water, 841 M gals. @		.039817	33.48	
				102.07
Material:				
50 pounds flour sack rags @		.2438	12.19	
20 flashlight lamps @		.0432	.86	
12 flashlight batteries @		.1350	1.62	
4 1 inch C. I. pipe plugs @		.0173	.07	
60 pounds rags @		.0974	5.84	
1 flashlight @		2.2000	2.20	
100 feet ¾-inch air hose @		.0407	4.07	
4 brass hose connections @		1.3000	5.20	
110 gals. kerosene @		.0386	4.25	
110 gals. gas oil @		.0280	3.20	
54 gals. 95 cylinder oil @		.2896	15.64	
54 gals. 250–4½ lube @		.0638	3.45	
Warehouse overhead expense			.79	
				50.44
Total				166.78

Exhibit F–2.—Swit'h engines—last six months 1931.—Works expense

August	Hours	Rate	Amount	
Boilermakers field	8.00	$1.3675	$10.94	
Blacksmith shop	4.00	1.0200	4.08	
Car repair shop	2.33	3.4249	7.98	
				$23.00
Trucking, No. 2695	1.00	.8600	.86	.86
Air, 812 M cu. ft. @		.04579	37.18	
Electricity, 30 k. w. h. @		.0065	.20	
Ice, 1,275 lbs. @		.34008	4.34	
Steam, 80 M lbs. @		.3050	24.40	
Water, 849 M gals. @		.032930	27.97	
				94.09
Material:				
1 4-inch paint brush @		1.03	1.03	
12 flashlight batteries @		.135	1.62	
50 feet 1-inch water hose @		.18	9.00	
60 pounds mattress rags		.09745	5.84	
1 box Garlock #2200 packing @		.7723	.77	
55 gals. kerosene @		.0308	1.69	
165 gals. gas oil sp. 34 @		.0360	5.94	
Warehouse overhead expense			1.53	
				27.42
Total				$145.37

Exhibit E-3.—Switch engines—last six months 1931—works expense

September	Hours	Rate	Amount	
Trucking, No. 2086	1.00	$0.8400	$0.84	$0.84
Air, 430 M cu. ft. 60		.044001	19.31	
Electricity, 40 k. w. h. 60		.004827	.20	
Ice, 725 lbs. 60		.320350	2.39	
Steam, 45 M lbs. 60		.2774	12.48	
Water, 421 M gals. 60		.027201	11.49	
				45.87
Material:				
60 pounds rags 60		.0948333	5.69	
10 lantern lamps 60		.0528	.53	
12 batteries for lanterns 60		.3252	3.90	
12 flashlight batteries 60		.135	1.62	
55 gals. gas oil 60		.022543	1.24	
54 gals. valve special oil 60		.25481	13.76	
85 gals. kerosene 60		.032	1.70	
54 gals. 300 sp. 1041 oil 60		.07370	3.98	
Warehouse overhead expense			.73	
				33.19
Total				79.03

Exhibit E-4.—Switch engines—last six months 1931—works expense

October	Hours	Rate	Amount	
Car repair department	0.67	$3.2388	$2.17	$2.17
Teams	4.00	.7750	3.10	3.10
Trucking, No. 2086	1.00	.7000	.70	.70
Air, 520 M cu. ft. 60		.044243	23.27	
Electricity, 40 k. w. h. 60		.003935	.24	
Ice, 725 lbs. 60		.330286	2.40	
Steam, 80 M lbs. 60		.2835	22.68	
Water, 432 M gals. 60		.034883	15.08	
				63.67
Material:				
10 flashlight lamps 60		.0432	.43	
24 flashlight batteries 60		.135	3.24	
1 1-inch brass globe valve 60		2.38	2.38	
5 pounds graphite 60		.3135	1.57	
1 8-inch smooth flat file 60		.304	.26	
54 gals. 904 Superheat Oil 60		.1301	7.03	
Warehouse overhead expense			.63	
				15.54
Total				85.24

Exhibit P. 5.—Switch engines—last six months 1931—works expense

November	Hours	Rate	Amount	
Machine shop	2.50	$1.4360	$3.59	$3.59
Air, 1,168 M. cu. ft. @		.0410	47.88	
Electricity, 40 k. w. h. @		.0066	.26	
Ice, 880 lbs. @		.039480	.35	
Steam, 55 M. lbs. @		.2624	14.43	
Water, 140 M. gals. @		.03384	4.74	
Material				71.31
70 pounds rags @		.091143	6.38	
20, 150 watt clear lamps @		.378	9.07	
1, ¾ inch union @		.325	.33	
10 flash light lamps @		.0842	.84	
12 flash light batteries @		.185	2.02	
55 gals. kerosene @		.0353	1.94	
85 gals. gas oil @		.0380	3.27	
54 gals. 250 A.v.sp. 1022 oil @		.0636	3.43	
Warehouse overhead expense @			3.02	
				27.32
Total				102.22

Exhibit P. 6.—Switch engines—last six months 1931—works expense

December	Hours	Rate	Amount	
Carpenter shop	1.00	$2.1200	$2.12	
Machine field	1.00	1.4360	1.43	
Labor, process men	8.00	.9380	7.50	
				$11.05
Trucking, No. 3986	1.33	.7504	1.01	1.01
Air, 840 M. cu. ft. @		.0460	38.64	
Electricity, 70 k. w. h. @		.0634	4.44	
Ice, 125 lbs. @		.0027.8	.50	
Steam, 55 M. lbs. @		.2874	15.81	
Water, 130 M. gals. @		.0230	2.24	
Material				56.63
60 pounds rags @		.09	5.40	
10 flash light lamps @		.043	.44	
12 flash light batteries @		.186	2.24	
54 gals. valve oil @		.1921	10.37	
54 gals. sp. 1022 oil @		.0638	3.45	
54 gals. gas oil @		.0264	1.50	
Warehouse overhead expense			4.12	
				27.39
Total				96.07

Exhibit F-1—Switch engines—Last six months 1931—Repairs

July	Hours	Rate	Amount
Boilermakers field	16 00	$1 1880	$19 01
Brickmasons department	5 00	1 7120	8 56
Car repair shop	6 00	1 3833	7 69
Labor department	6 00	1433	0 86
Machine field	85 00	1 3833	45 18
Machine shop	7 00	1 3833	9 67
Pipe shop	4 50	8133	3 66
			101 52
Trucking; No. 3548	4 00	5033	2 01 2 69
Foaming	2 00	8750	1 74 1 75
Material			
1 bronze disc for valve @		1 61	1 61
2 feet 8 inches 1¼ inch seamless tubing @		41	1 09
2 4½ feet 2½ inch water tank hose @		2 8393	5 12
6 brake shoes @		1 833	11 13
1 80 Walsh fire brick @ M		80 00	9 60
1 1¼ inch brine valve @		10 00	10 00
Warehouse overhead expense			88
			39 76
Total			145 09

Exhibit F-2—Switch engines—last six months 1931—repairs

August	Hours	Rate	Amount
Blacksmith shop	2 00	$1 055	$2 11
Brickmasons' department	5 50	1 4678	7 93
Car repair shop	3 00	1 4333	4 30
Labor department	10 00	88	8 80
Machine field	77 00	1412	10 87
Machine shop	1 00	1 0100	1 01
Pumers shop	50	1 8800	94
			35 96
Trucking			
No. 1121	1 00	1 5000	1 50
No. 2986	2 00	8500	1 70
			3 20
Welding	1 00		1 00 1 00
Material			
7 pounds ⅞ hexagon tobin bronze @		1 26	1 61
1 pound grinding compound @		1 333	33
200 Walsh fire brick @ M		10 00	10 00
1 box fire clay @		2	2 00
12 pounds 3½ inch tobin bronze @		1	9 84
Warehouse overhead expense			1 19
			25 47
Total			130 34

Exhibit F–3.—Switch engines, last six months 1931—repairs

September	Hours	Rate	Amount	
Blacksmith shop	8.00	$1.2113	$9.69	
Boiler field	1.33	1.4060	1.87	
Carpenter field	1.00	.7500	.75	
Labor department	12.00	.5700	6.84	
Machine field	41.00	.9710	39.81	
Machine shop	2.00	1.5700	3.14	
Miscellaneous department	2.00	.7650	1.53	
Pipe field	30.00	.7990	22.97	
Pipe shop	7.33	1.1514	8.44	
				$96.04
Trucking, No. 2880	2.00	.8400	1.68	1.68
Tractor	1.00	1.2900	1.29	1.29
Teaming	3.00	.8000	2.40	2.40
Material:				
1 A. R. A. No. 2 brabe beam @@		5.0200	5.02	
2 chain clips @@		.3600	.72	
2 ⅞-inch hex. nuts @@		.0300	.06	
2 ⅝-inch x 2½-inch mch. bolts @@		.0340	.06	
1 Edna gauge glass @@		.5800	.58	
407 feet S. H. lumber @@ M		18.0000	7.33	
2 2½-inch x 7-inch steel comp. flange @@		1.3400	2.68	
1 3-inch x 7½-inch steel comp. flange @@		1.403	1.40	
8 ⅝ x 2½-inch. bolts and nuts @@		.0350	.28	
1 2½ x 4⅞ besto gaskets @@		.6495	.65	
1 3-inch x 5¾-inch besto gaskets @@		.0488	.05	
1 3 x 7½ comp. flange @@		1.40	1.40	
3 steel S. E. ells @@		2.00	6.00	
8 inches 3 inches std. line pipe @@		.258	.17+	
21 feet 6 inches 2½-inch std. line pipe @@		.244	5.25	
30 feet 2 inches 3-inch std. line pipe @@		.258	7.78	
Warehouse overhead expense			2.33	
				41.16
Total				142.57

Exhibit F–4.—Switch engines—last six months 1931—repairs

October	Hours	Rate	Amount	
Blacksmith shop	61.00	$1.1962	$72.97	
Boilermakers field	399.33	.9639	384.92	
Boilermakers shop	2.00	.3950	1.79	
Browning hoist No. 1	1.00	5.9700	5.97	
Car repair shop	26.66	3.2517	86.69	
Carpenter field	3.00	1.1167	3.35	
Carpenter shop	29.50	1.9366	57.13	
Electric department	15.00	1.3020	19.53	
Insulation department	11.00	.7218	7.94	
Labor department	278.83	.5239	146.08	
Machine field	903.50	.9745	880.42	
Machine shop	466.33	1.1718	546.46	
Miscellaneous department	4.33	.8614	3.73	
Paint department	3.50	.9371	3.28	
Pipe field	38.09	.7842	29.80	
Pipe shop	15.34	1.1838	18.16	
Tinner field	12.50	.9528	11.91	
Tinner shop	27.00	1.3241	35.75	
Welding field	133.17	.8007	106.63	
Welding shop	91.00	1.3024	118.52	
				$2,541.03
Trucking:				
No. 1042	7.00	.7643	5.35	
No. 2856	5.00	.7240	3.62	
No. 2847	2.00	.9700	1.94	
No. 3548	1.00	.8000	.80	
				11.71
Tractors	4.00	1.1300	4.52	4.52
Teaming	3.50	.6857	2.40	2.40
Material:				
1 fire door and frame @@		14.14	14.14	
1 cyl. head @@		25.48	25.48	
33 1⅞ x 2 x 12-inch 1-inch tubes @@		3.42	102.60	
8 4½ x 5½ x 12-inch 1-inch tubes @@		10.65	85.20	
1 2½-inch gig. gate valve @@		8.24	8.24	
1 2-inch globe valve @@		5.64	5.64	
1 steel reducing flange @@		2.95	2.95	
5 steel compression flanges @@		1.364	6.82	
61 feet 6 inches std. line pipe @@		.2200	13.53	

Exhibit F–4.—Switch engines—last six months 1931—repairs—Continued

October	Hours	Rate	Amount	
30 2-inch cs. tube ferrules @@		.1100	3.30	
Oxygen and gas			1.68	
40 pounds Babbitt @@		.3952	15.81	
Miscellaneous oils and greases			3.24	
472 M. cu. ft. compressed air @@		.04015	18.95	
1 C. I. flg. ell @@		2.39	2.39	
3 cans grinding comp @@		.9200	2.76	
2 pounds white lead @@		.1300	.26	
1 sheet 1 x 32 x 36 x 36 pkg. @@		1.16	1.16	
Sundry gaskets, bolts, nuts, etc			25.14	
8 feet 8 inches seamless tubing @@		.1973	1.71	
1 Edna water gauge glass @@		.6800	.68	
250 pounds med. carbon C. R. steel @@		.0390	9.75	
270 pounds Swede iron @@		.0395	10.68	
10 pounds Tobin bronze @@		.2280	2.28	
172 pounds mild steel @@		.03389	5.83	
53 pounds stay bolt iron @@		.0401	2.13	
27 feet 2 inches C. R. steel @@		.2871	7.80	
4 feet Norway steel @@		.2475	.99	
6 $\frac{33}{64}$-inch drills @@		.2267	1.36	
1 gal. black enamel @@		2.93	2.93	
17 pounds rags @@		.2000	3.40	
Warehouse overhead expense			22.69	
				411.52
Total				2,971.18

Exhibit F–5.—Switch engines—last six months 1931—repairs

November	Hours	Rate	Amount	
Blacksmith shop	39.50	$1.1481	$45.35	
Boilermakers field	53.50	.9237	49.42	
Boilermakers shop	3.00	1.3167	3.95	
Brickmasons department	6.00	1.8467	11.08	
Car repair department	21.34	3.6541	77.98	
Carpenter field	15.00	.8473	12.71	
Carpenter shop	98.00	1.4083	135.20	
Electric department	57.00	1.1879	67.71	
Insulation department	72.00	.7153	51.50	
Labor department	100.50	.5869	58.98	
Machine field	1,041.50	.9573	997.06	
Machine field, premium labor			1.42	
Machine shop	96.17	1.3277	127.69	
Miscellaneous department	2.00	.8750	1.75	
Paint department	268.00	.9578	256.68	
Pipe field	70.50	.8177	57.65	
Pipe shop	3.99	1.1804	4.71	
Reclamation department	2.00	1.4350	2.87	
Riggers field	7.00	.8400	5.88	
Tinner field	51.00	1.2351	62.00	
Tinner shop	72.00	1.5268	109.93	
Welder field	15.50	1.0474	15.77	
Welder shop	26.00	1.3904	36.15	
				$2,194.43
Trucking:				
Number 1042	3.00	.8000	2.40	
Number 1721	1.00	2.5200	2.52	
Number 2086	9.83	.9064	8.91	
Number 3111	1.00	1.5500	1.55	
				15.38
Tractors	2.00	1.4700	2.94	2.94
Teams	5.00	.8580	4.29	4.29
Material:				
6 driving tires @@		56.74	340.44	
66 boiler tubes, 2-inch x 12-foot x $13\frac{1}{16}$-inch x 12 @@		2.2543	148.79	
8 boiler tubes, $5\frac{1}{2}$ inch x 12-foot x $13\frac{1}{16}$-inch x 12 @@		7.0850	56.68	
Oxygen and gas			80.47	
226 sq. ft. magnesia @@		.18204	41.14	
524 M. cu. ft. compressed air @@		.04013	21.03	
28 feet galvanized iron @@		.1071	3.00	
37 pounds Tobin bronze @@		.1729	6.40	
2 ball bearings @@		3.040	6.08	
230 pounds casting @@		.0627	14.42	
67 gals. oil and greases @@		.0443	2.97	
$14\frac{1}{4}$ gals. sundry paints @@		1.8625	26.54	
15 gals. black enamel @@		2.3593	35.39	

Exhibit F–5.—Switch engines—last six months, 1931—repairs—Continued

November	Hours	Rate	Amount	
25 pounds galvanized wire @		.0420	1.05	
1 handwheel, C. I. @		.8100	.81	
3 steel comp. flanges @		1.7667	5.30	
1 3-inch std. gate valve @		3.9200	3.92	
22 feet 8 inches std. pipe @		.2541	5.76	
175 inches insulated wire @		.0906	15.85	
24 wash out plugs @		.7375	17.70	
245 feet B. M. oak @	M	98.94	24.24	
9 pcs. clear window glass @		.5944	5.35	
3 sacks asbestos cement @		3.9000	11.70	
2 sets valve rod packing @		4.2000	8.40	
1 yd. Besto packing @		1.6000	1.60	
1 2½ feet x 4 inch hose @		2.8600	2.86	
1 230-pound angle iron @		.8300	4.83	
40 feet plain steel cable @		.0655	2.62	
41 feet creosoted lumber @	M	68.78	2.82	
2 10 x 12 cup feathers @		1.1300	2.26	
3 pounds cold bronze & chrome green pow. @		.6133	1.84	
Sundry bolts, screws, washers, bushing plugs, etc			28.24	
Warehouse overhead expense			83.19	
				1,013.69
Total				3,230.73

Exhibit F–6.—Switch engines—last six months 1931—repairs

December	Hours	Rate	Amount	
Blacksmith department	8.35	$1.2197	$10.16	
Boiler field	21.00	.99048	20.80	
Carpenter shop	1.00	2.1200	2.12	
Car repair shop	2.00	4.8300	9.66	
Instrument shop	6.00	1.2583	7.55	
Machine field	96.00	.999063	95.91	
Machine shop	24.50	1.5951	39.08	
Paint department	11.50	1.1122	12.79	
Tinner shop	.50	1.4600	.73	
				$198.
Trucking:				
No. 1042	1.00	.8200	.82	
No. 2986	3.00	.7600	2.28	
				3.
Material:				
1 1¾-inch O. D. plug @		1.0000	1.00	
35-pound 1⅜ rd. steel @		.03	1.05	
18-feet - ⅜-inch cable @		.01833	.33	
1-pound 5/16-inch No. 106 J. M. packing @		1.130	1.13	
80 cu. ft. oxygen @		1.28	1.02	
40 cu. ft. gas @		2.53	1.01	
1 1-inch No. 2237 gov. compressor @		26.406	26.41	
½ pounds rags @		.090	.54	
6 ⅝ x 4-inch S. H. screws sex @		.048	.29	
6 brake shoes @		1.960	11.76	
1 No. 8436 middle gasket @		.175	.18	
1 No. 15534 lower gasket @		.06	.06	
1 No. 19758 upper gasket @		.085	.09	
1 No. 9733 bottom case @		6.55	6.55	
1 No. 11045 equalizing piston @		1.63	1.63	
1 No. 10832 piston ring @		.35	.35	
1 red devil glass cutter @		.120	.13	
1 oz. No. 3 glaziers @		.025	.02	
400 Walsh XX fire brick @	M	62.43	24.97	
200 pounds Durastick @		.0381	7.62	
3 yds. artificial bulk leather @		1.2367	3.71	
30 sheets 24 x 28 x 72 inches planished iron @		1.7517	52.55	
¾ gal. blk. engine enamel @		2.100	1.58	
¾ gal. head liner enamel @		2.283	1.71	
1 A. R. A. brake beam @		5.02	5.02	
4 ⅜ x 3-inch cotter keys @		.01	.04	
1 3-inch 1BBM crane valve @		16.76	16.76	
1 3 x 7½ steel flange @		1.40	1.40	
6 steel tires for main drivers @	pr	30.00	90.00	
Warehouse overhead expense			15.68	
				238.27
Total				440.17

EXHIBIT A - 94

[illegible] OIL & REFINING COMPANY

Record of in and outbound cars at Baytown, Texas refinery on which switching allowance has been Paid.

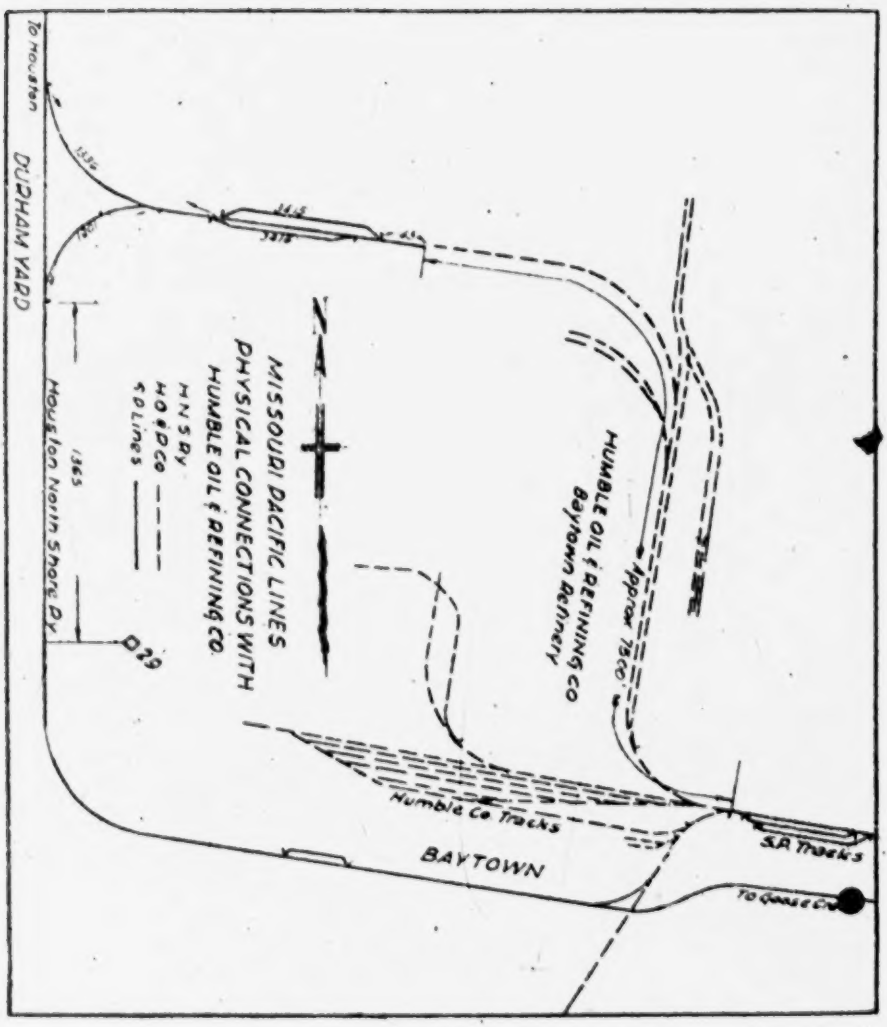
Year and Months	T. & N. O.			[illegible]		
	In	Out	Total	In	Out	Total
1930						
January	840	196	1,036	760	452	1,192
February	452	172	624	739	268	1,007
March	670	200	870	838	338	1,176
April	618	173	788	742	275	1,017
May	536	107	643	832	307	1,179
June	492	94	586	653	183	836
July	503	93	670	819	278	588
August	804	167	671	827	318	1,148
September	1,120	198	1,320	611	303	914
October	1,188	151	1,348	886	270	668
November	281	134	680	804	225	819
December	624	118	736	606	293	899
	7,687	1,749	9,416	9,739	3,721	11,438
1931						
January	807	101	908	358	631	817
February	378	100	478	834	280	614
March	317	118	450	1,406	277	1,683
April	657	101	688	4,041	274	4,315
May	386	322	848	1,903	881	1,804
June	119	107	276	91	278	369
July	239	126	365	179	196	353
August	108	110	218	144	266	410
September	198	104	250	159	286	445
October	119	137	256	126	262	388
November	276	80	306	180	264	384
December	267	66	422	245	256	500
	5,279	1,662	6,821	8,995	3,466	12,061
1932						
January	229	76	305	435	260	695
February	191	87	268	450	262	712
March	119	69	187	135	262	397
	539	201	740	1,020	784	1,804

CH:HJB

4/14/32

44090—38——28

EXHIBIT A—94½



815-LL *Exhibit A-104*

This agreement between Morgan's Louisiana and Texas Railroad and Steamship Company, hereunto duly authorized and hereinafter styled "Morgan Company", and the Celotex Company, hereunto duly authorized and hereinafter styled "Celotex Company": Witnesseth, that whereas, the parties hereto entered into a contract dated September 25th, 1926, providing for the construction, maintenance, and operation of certain railroad trackage for use in serving the manufacturing plant of Celotex Company, located at Celotex, in Jefferson Parish, Louisiana, and further providing for use by Celotex Company of certain tracks or portions of tracks previously constructed and now maintained by Morgan Company, all as provided in said contract, a copy of which is hereto attached and marked "Exhibit A" for identification; and

Whereas, the manufacturing plant of Celotex Company is located adjacent to and served by tracks of Morgan Company, connecting with tracks owned by and within premises of Celotex Company, commonly known as plant facilities:

It is agreed between the said parties as follows:

I

In consideration of Celotex Company performing switching service which must otherwise be performed by Morgan Company, commonly referred to as "carrier service," this including the handling and placing for unloading of all loaded cars received for account of Celotex Company and handling outbound all loaded cars and empties, Morgan Company agrees to pay to Celotex Company the sum of One Dollar ($1.00) per loaded car received by and/or forwarded from Celotex Company's manufacturing plant via Morgan Company's line.

Payment by Morgan Company to Celotex Company shall be made monthly in accordance with statement compiled by Morgan Company and approved by Celotex Company reporting the loaded cars inbound and outbound via Morgan Company's line for preceding month.

II

In serving said manufacturing plant of Celotex Company, Morgan Company will deliver, on the 6,250 ft. track to be constructed by Morgan Company as described in Article I of Exhibit A, all loaded or empty cars, same to be handled therefrom by Celotex Company as its service and convenience may require. Cars, either loaded or empty, returned by Celotex Company to Morgan Company for handling outbound, will be delivered upon the same track.

All cars, loaded or empty, placed by Morgan Company upon said track, shall be considered as delivered to and in possession of Celo-

tex Company from time of such placing by Morgan Company until their return to said track by Celotex Company empty of, if under outbound load, until return to said track by Celotex Company and signing of bill of lading there'f.

III

Celotex Company agrees to promptly remove from the track, hereinabove described all cars, loaded or empty, delivered thereon for account of Celotex Company. Upon failure of Celotex Company to remove said cars with promptness, thereby requiring Morgan Company to hold on other tracks owned by Morgan Company cars consigned to Celotex Company, such cars so held by Morgan Company shall, upon notice to Celotex Company, be considered as delivered for purposes of accounting.

IV

This agreement shall continue in effect for so long a period as the second party shall operate its manufacturing plant at Celotex.

In testimony whereof, the parties hereto have executed this agreement in sextuple on this 25 day of September 1926.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY,

By (Signed) R. C. WATKINS,
Vice Pres. & Gen. Mgr.

THE CELOTEX COMPANY,

By (Signed) C. F. DAHLBERG,
1st Vice Pres.

Approved as to form:
(Signed) DENEGRE LEOVY & CHAFFE,
General Attorneys for Morgan Company.

Exhibit A

To the Honorable Public Service Commission of the State of Louisiana.

GENTLEMEN: Your undersigned petitioners respectfully represent that on the 25 day of September, A. D. 1926, they entered into a contract for the construction, maintenance, and operation of certain railroad trackage at Celotex, therein described, which contract is hereto attached, and among other things provides that under certain conditions the Railroad Company shall have the right to disconnect and may refuse to operate over any track referred to therein in event that (a) the Industry ceases for a continuous period of three years (unless prevented by law, strikes, or via major) the doing of business in an active and substantial way, (b) the Industry fails to observe and perform each and every of the covenants and promises it has agreed to observe and perform, (c) the Railroad Company is required account of the change of any tracks, or by law, ordinance, regulation,

or order of any governmental or lawfully constituted public authority having jurisdiction in the premises, to discontinue the operation of the trackage, or to elevate, depress, or otherwise change said trackage, or other tracks in vicinity thereof, in such manner as to render it impracticable, in the Railroad Company's judgment, to continue to operate the same.

Now therefore, your petitioners respectfully request that the contract as entered into be approved, and that the rights of the Railroad Company as cited above and as contained in said contract be reserved, approved and confirmed.

Respectfully signed and submitted this the 25 day of September A. D. 1926.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY,

By [s] R. C. WATKINS,
Vice Pres. & Gen'l Mgr.

THE CELOTEX COMPANY,

By [s] C. F. DAHLBERG,
1st Vice Pres.

Approved as to form:

DENEGRE, LEOVY & CHAFFE,
General Attorneys.

THE STATE OF LOUISIANA,
Parish of Orleans.

This agreement, made and entered into by and between the Morgan's Louisiana and Texas Railroad and Steamship Company, hereinafter styled "First Party," and The Celotex Company, hereinafter styled "Second Party." Witnesseth, that whereas, in order that additional service for its plant at Celotex, Louisiana, may be provided, the Second Party has requested the First Party to construct certain tracks in the vicinity of said plant, and to grant it the use of portions of said tracks when constructed, and

Whereas First Party is willing to construct the new tracks hereinafter defined and to grant the Second Party the use of portions of the same in common with itself upon the acceptance of certain terms and obligations by the Second Party.

Now therefore, it is agreed between the parties hereto as follows:

Article I

The First Party agrees and binds itself to furnish the rails and all material and labor for and to construct at its own expense the following described tracks as shown by red lines on the attached map Drawing 26023.

1. A track 6,252 feet in length on the south side of its main track as shown by solid red line, between the letters "A" and "B" on said attached map.

2. A connection from track "A"-"B" extending from a point near the letter "B" southeasterly to Second Party's track at the letter "E."

3. A crossover track 196 feet long between the letters "F" and "G,"

4. That part of the crossover track, between the letters "H" and "I" which is located on First Party's property being a length of 221 feet.

Article II

(a) All of said tracks, when constructed, shall be owned by First Party. Second party agrees to reimburse First Party for the cost of the 221 feet of the crossover "H"–"I," which cost is estimated to be Sixteen Hundred Seven and no/100 ($1,607.00) Dollars, and also for the cost of making certain necessary changes in First Party's block signal system which cost is estimated to be Five Thousand Four Hundred Sixty three & 33/100 ($5,463.33) Dollars.

(b) Cost as herein used is understood to include materials at current stock prices plus freight and handling charges. Also actual labor charges plus customary allowances thereon to cover accounting and use of tools.

Article III

(a) When said track shall have been constructed, First Party grants to Second Party the right of use, in common with itself and any other party to whom a similar privilege may be granted, 2,000 feet of track "A"–"B" being that part of said track lying 2,000 feet east of the point designated by the letter "D"; the crossover track "F"–"G"; that portion of first party's main line track between the letters "G" "H" and 221 feet of the crossover "H"–"I" for performing switching service necessary in operating its manufacturing plant.

(b) In consideration for such privilege, the Second Party agrees to pay to First Party at the office of its Treasurer in the City of New Orleans, Louisiana, as a yearly rental a sum equal to two (2%) percent of the value of the 2,000 feet of track "A"–"B," said value for the purpose of this contract is understood to be Ten Thousand Five Hundred Eighty Three & 22/100 ($10,583.22) Dollars, together with the sum of two (2%) percent of the value of crossover track "F"–"G," herein agreed to have a value of Eleven Hundred Eighty Three & 14/100 ($1,183.14) Dollars; and as its proportion of the expense of maintenance of said tracks, understood and accepted as One Hundred and No/100 ($100.00) Dollars per annum.

Article IV

(a) In addition to the trackage to be constructed by First Party as outlined above, First Party agrees and binds itself to furnish the rails and all material and labor for and to shift the present main line turnout as shown by dotted yellow line on said attached map at the point "C" to the position shown by dotted red line at the point "D."

(b) The Second Party will reimburse the First Party for all costs, charges, or expenses incident to the shifting of the above described trackage and when same has been shifted to the new location it shall be owned by the First Party.

Article V

(a) While the First Party undertakes to maintain its tracks, the joint use of which is herein granted the Second Party, in a reasonably safe and serviceable condition, it is expressly agreed and understood that the First Party shall not be liable for injuries to or death of persons or loss of or damage to property in the employ, custody, or control of the Second Party resulting from or growing out of the condition of said tracks. It being understood that for the purpose of this agreement the Second Party assumes all such risks as fully and absolutely as if the said tracks were its own.

(b) In event any of the Second Party's engines or engines and cars, should, while operating over or upon the said tracks, be derailed or wrecked, the Second Party assumes all damages therefor and will reimburse the First Party for any expense incurred in repairing the tracks and picking up and removing the equipment of the Second Party or otherwise clearing the track and property of the First Party.

Article VI

As to the operation and movement of trains, engines, engines and cars, over the tracks described in Article III hereof, it is agreed by and between the parties hereto as follows:

(a) That all employes or other persons who may be engaged by second party in handling or operating the engines, or engines and cars of the Second Party while upon the tracks of the First Party are the sole and exclusive employees of the Second Party; and the Second Party shall be solely responsible for the acts of said employes while operating its engines, or engines and cars upon the First Party's tracks.

(b) Each party hereto assumes entire responsibility for damages resulting from injury to or death of persons, including employees, or injury to or killing of livestock, damage to tracks of the First Party and property of every character and description which may result from or be caused by its employees, locomotives, or trains.

(c) Where injury to or death of persons, including employees, or injury to or killing of livestock, or damage to property of any character or description is caused by the joint negligence of the employees of both parties, or where responsibility for such injury, death, or damage cannot be definitely fixed or ascertained, then and in such event each party shall assume one-half (½) of the liability for injury to or death of persons, including employees, patrons, and others upon or adjacent to said tracks by its license or invitation and each be liable for one-half (½) of all damages to property in its care, custody, or control.

(d) It is understood and agreed that in event of collisions between the engines, or engines and cars of the Second Party and those of any other Railroad Company to which similar rights and privileges may be granted by the First Party, or in event of other accidents resulting by reason of such use, the liability for damages resulting from such collisions or other accidents shall be determined and set-

thed between the Second Party and such other Railroad Company or Companies, the First Party shall not as between it and the Second Party be liable for any such collision and other accidents, except when caused by the negligence of the sole employees, or agents of the First Party.

(e) The Second Party agrees and obligates itself to indemnify and hold the First Party harmless against all claims, damages, causes of action, suits, or judgments of every kind and character whatsoever, including court costs and attorneys' fees which may be brought or lodged against the First Party where liability therefor is, under the terms of this agreement, assumed by the Second Party. The Second Party shall be given (10) days written notice of any claim, claims, or suits made or brought against the First Party, and the Second Party at its option shall have the right to settle or defend such claims or suits in the name of the First Party.

(f) The second party will comply with all State and Federal Safety Appliance laws relative to equipment operated by it over tracks owned and controlled by the First Party, and the Second Party hereby expressly assumes liability for failure upon its part to comply with any law or governmental regulation, State or Federal, affecting the construction, equipment, maintenance, operation, or inspection of its equipment operated over the tracks of the First Party aforesaid, or the number, qualifications, or hours of service of persons employed thereon, and will promptly reimburse and indemnify the First Party for any damages, judgments, fines, penalties, cost, or charges which may be assessed or charged against First Party, by reason of any violation or alleged violation of said laws or regulations or any of them, due to any act or omission of Second Party or its employes, and all expenses and Attorney's fees incurred in defending any such case which may be brought against First Party on account thereof.

(g) It is agreed that in the event any suit or suits are brought against First Party for any such violation or alleged violation of law or regulations on the part of the Second Party, the Second Party shall be impleaded in and made party defendant to such suit or suits, and that said Second Party will defend same free of any charge, cost, or expense to the First Party.

Article VII

All sums due or to become due by the Second Party under this agreement as annual rental, share of maintenance expense, etc., shall be paid to the First Party, annually in advance, and at the office of its Treasurer in the City of New Orleans, Louisiana, as aforesaid.

Article VIII

(a) It is understood that the movement of the railroad locomotives involves some risk of fire, and the Second Party assumes all responsibility for, and agrees to indemnify the First Party against loss or

damage to property of the Second Party or to property upon its premises, regardless of First Party's negligence, arising from fire caused by locomotives operated by the First Party on said trackage, or in its vicinity for the purpose of serving said Second Party, except to the premises of the First Party and to rolling stock belonging to the First Party or to others, and to shipments in the course of transportation. Nothing in this paragraph shall be understood as releasing the First Party from its obligations to provide locomotives properly equipped for preventing fires.

(b) The Second Party also agrees to indemnify and hold harmless the First Party for loss, damage, or injury, from any act or omission of the Second Party, its employees or agents, to the person or property of any other person or corporation while on or about the trackage other than that covered by Article VI hereof, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

Article IX

It is agreed that the Second Party shall be liable for cars placed or operated upon the above described trackage for the use and benefit or upon the request of the Second Party, whether such cars are owned by the First Party or others, in the event of destruction of, or damage to, said cars by fire not originating from the locomotives of the First Party, the said Second Party shall pay all bills for such destruction or damage upon presentation thereof. Said bills shall be rendered in accordance with the established practice of railroads in settling such matters between themselves.

Article X

(a) The right is given the First Party at any time to make use of said trackage for the purpose of receiving and delivering freight from and to other patrons, to spring other tracks therefrom to shift and to extend the same provided such use or any extension thereof shall not unreasonably interfere with the Second Party in its use thereof, but in this event the interest and maintenance charges shall be prorated upon basis of cars handled.

(b) It is expressly agreed and understood that this contract and the rights accruing hereunder are not transferable by the Second Party and that the Second Party shall not assign this contract or grant the use of the trackage herein referred to, to any other party or parties without the written consent of the First Party.

Article XI

(a) The First Party shall have the right to disconnect and may refuse to operate over any track referred to herein, in event that (a) the Second Party ceases for a continuous period of three years (unless prevented by law, strike, or vis major) the doing of business

in an active and substantial way; (b) the Second Party fails to observe and perform each and every of the covenants and promises it has agreed to observe and perform; (d) the First Party is required by law, ordinance, regulation, or order of any governmental or lawfully constituted public authority having jurisdiction in the premises, to discontinue the operation of the trackage or to elevate, depress, or otherwise change said trackage or other tracks in vicinity thereof in such manner as to render it impracticable in the First Party's judgment to continue to operate the same, but in the event of any such change of tracks or of grade, the second Party may retain its track connection by paying all cost of adjusting that trackage covered by this agreement to conform thereto provided always such adjustment is in the opinion of the First Party, practicable.

Article XII

This agreement shall continue in effect for so long a period as the Second Party shall operate its manufacturing plant at Celotex:

In testimony whereof, the parties hereto have executed this agreement in sextuple on this the 25 day of September, A. D. 1926.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY,

By [s] R. C. WATKINS, *Vice Pres. & Gen'l Mgr.*

THE CELOTEX COMPANY,

By [s] C. F. DAHLBERG, *1st Vice Pres.*

Approved as to form:

DENEGRE, LEOVY & CHAFFE,
General Attorneys for First Party.

815-MM *Exhibit A-105*

New Orleans, La., Nov. 24, 1926.

Bill No. 38667. Month's account Nov. 1926. Disbursements dept. #167

THE CELOTEX COMPANY,
Marrero, La.

To Morgan's Louisiana & Texas Railroad & Steamship Co.:

For value of G. H. & S. A. locomotive 354 sold to your company and delivered to Marrero, La., November 4th, 1926.

Value of locomotive	$3,500.00
Cost of repairs	46.81
Cost of flange oilers applied	25.05
1,877 gals. fuel oil @ $0.03427 per gal	64.32
	3,636.18

Sale order L-842, November 9, 1926.

Distribution:

778-1 Auditor's clearing account, miscellaneous	$3,500.00
716-1 Material and supplies—general joint account—fuel	64.32
778-28 Division accounting bureau	71.86

Copy.

Exhibit A–105½

The Celotex Company, Marrero, La., cost of locomotive operation November 1, 1930, to April 30, 1932

	Operating cost			Maintenance cost						
	Direct labor	Fuel oil and supplies	Total operating	Maintenance labor	Maintenance material	Outside repairs	Total maintenance	Locomotive rental	Miscellaneous	Grand total
1930										
November	$694.00	$258.70	$952.70	$152.27			$152.27			$1,104.97
December	845.35	349.74	1,195.09	104.35	$2.80		107.15			1,302.24
1931										
January	735.14	272.89	1,008.02	52.80			52.80			1,060.83
February	330.07	123.23	453.30	33.60		$809.81	843.41			1,296.71
March	526.60	172.68	699.28	37.75			37.75			737.03
April	632.70	197.95	830.65	39.45			39.45		$1.34	871.44
May	496.10	157.19	653.29	28.50	1.74		30.24			683.53
June	628.46	160.57	789.03	40.95	3.18		44.13			833.16
July	796.88	184.66	981.54	24.05	.62		24.67		4.17	1,010.38
August	571.18	109.78	680.96	28.15	6.66		34.81			715.77
September	467.39	93.37	560.76	11.80	2.74		14.54			575.30
October	433.57	83.77	517.34	31.40	2.27		33.67			551.01
November	339.92	69.22	409.14							409.14
December	276.47	60.80	337.27	1.95			1.95	$500.00		839.22
1932										
January	393.07	125.34	518.41		.42		.42	260.00		778.83
February	337.08	95.81	432.89					260.00		692.89
March	122.58	23.61	146.19	1.80	.03		1.83	80.00		228.02
April		9.60	9.60					482.15		491.75
Total cost as charged	8,626.56	2,548.91	11,175.47	588.82	20.46	809.81	1,419.09	1,582.15	5.51	14,182.22
Depreciation: 15 % per annum on $3,571.86									803.67	803.67
Track rental and railroad maintenance, interchange tracks:										
Morgan, La. & Tex. R. R. & S. S. Co. $335.32 per year									502.98	502.98
Tex. Pac.-Mo. Pac. $321.36 per year									482.04	482.04
Total actual cost	8,626.56	2,548.91	11,175.47	588.82	20.46	809.81	1,419.09	1,582.15	1,794.20	15,970.91

We hereby certify that the foregoing is a true and correct statement of the cost of locomotive operation for the period November 1, 1930, to April 30, 1932.

THE CELOTEX COMPANY,
W. T. BOWKER,
Plant Auditor.

The Celotex Company, Marrero, La., analysis of car movement November 1, 1930, to April 30, 1932

	In-bound				Out-bound			Grand total	Switching claims
	Bagasse	Waste newsprint	Miscellaneous	Total	Celotex	Miscellaneous	Total		
1930									
November	858	183	17	1,058	230	9	239	1,297	$1,329.00
December	915	148	13	1,076	247	9	256	1,332	1,301.00
1931									
January	343	118	16	477	282	9	291	768	794.00
February	213	134	22	369	220	10	230	599	605.00
March	275	152	18	445	310	17	327	772	760.00
April	343	120	19	482	320	19	339	821	828.00
May	322	180	22	524	310	11	321	845	842.00
June	284	171	27	482	279	9	288	770	771.00
July	252	131	22	405	264	7	271	676	675.00
August	106	268	24	398	244	8	252	650	650.00
September	250	209	28	487	177	15	192	679	697.00
October	115	138	13	266	210	6	216	482	466.00
November	192	29	10	231	177	9	186	417	421.00
December	132	83	19	234	174	12	186	420	416.00
1932									
January	138	69	17	224	162	11	173	397	400.00
February	111	72	14	197	128	8	136	333	333.00
March	190	44	18	252	98	6	104	356	361.00
April		21	12	33	113	9	122	155	155.00
Total	5,039	2,270	331	7,640	3,945	184	4,129	11,769	11,804.00

We hereby certify that the foregoing is a true and correct statement of car movement for the period November 1, 1930, to April 30, 1932.

THE CELOTEX COMPANY,
W. T. BOWKER,
Plant Auditor.

The Celotex Company, Marrero, La., cost of tractor operation, November 1, 1930, to April 30, 1932

	Operating cost			Maintenance cost			Miscellaneous	Grand total
	Direct labor	Gasoline and supplies	Total operating	Maintenance labor	Maintenance material	Total maintenance		
1930								
November	$182.89	$25.23	$208.12	$11.00		$11.00		$219.12
December	147.73	40.60	188.33	13.05		13.05		201.38
1931								
January	128.45	107.60	236.05	79.32		79.32		315.37
February	213.47	86.86	300.33	3.50		3.50		303.83
March	262.34	140.71	403.05	21.00		21.00		424.05
April	285.54	108.68	394.22	27.80		27.80		422.02
May	251.45	98.52	379.97	39.25	$11.12	50.37		430.34
June	249.93	65.23	315.16	30.00	40.61	70.61		385.77
July	187.71	67.05	254.76	142.00	394.46	536.46		791.22
August	210.06	81.81	291.87	9.50	4.50	14.00		305.87
September	299.34	105.69	305.03	30.70	66.02	96.72		401.75
October	186.34	57.13	243.47	48.00	34.39	82.39		325.86
November	195.59	47.46	243.05	52.75	30.45	83.20		326.25
December	205.90	58.40	264.30	14.05	17.29	31.34		295.64
1932								
January	198.69	38.22	236.91	3.25	3.05	6.30		243.21
February	108.01	50.69	158.70	64.13	24.03	88.16		246.86
March	140.49	60.86	201.35	11.00	39.28	50.28		251.63
April	96.60	46.86	143.46	80.54	140.79	221.33		364.79
Total as charged	3,480.53	1,287.60	4,768.13	680.84	805.99	1,486.83		6,254.96
Depreciation: 15% per annum on $3,708.00								834.45
Total actual cost	3,480.53	1,287.60	4,768.13	680.84	805.99	1,486.83		7,089.41

We hereby certify that the foregoing is a true and correct statement of the cost of tractor operation for the period November 1, 1930, to April 30, 1932.

THE CELOTEX COMPANY,
W. T. BOWKER,
Plant Auditor.

815–OO *Exhibit A–106*

Morgan's Louisiana and Texas Railroad and Steamship Company's Local Terminal Charges, Tariff No. 253, I. C. C. 4642–B, issued at New Orleans November 20th, 1926, effective interstate traffic December 23rd, 1926, intrastate traffic November 20th, 1926, provides for an allowance of $1.00 per car to the Celotex Company for service performed in switching carload shipments of freight between loading and unloading tracks of the Celotex Company and track connections with the Morgan's Louisiana and Texas Railroad and Steamship Company at Marrero, La. This tariff was issued in accordance with my instructions, as result of advice received from Mr. R. C. Watkins, Vice-President & General Manager, of an agreement made with the Celotex Company to make this allowance, as compensation for switching performed by that company, this agreement by Mr. Watkins having been made after conference with Mr. Chas. S. Fay, at that time Traffic Manager at New Orleans, and myself.

Tariff in question continues in effect today same as originally issued.

Under adoption notice filed with the Interstate Commerce Commission of date April 5th, 1927, all tariffs then in effect via the Morgan's Louisiana and Texas Railroad and Steamship Company were withdrawn by that Company, and adopted by the Texas and New Orleans Railroad Company. This notice includes specifically I. C. C. 4642–B, providing for the switching allowance at Marrero.

815–PP Gulf, Colorado & Santa Fe Railway Co.

Additional information requested by Director in connection with Delta Land & Timber Company plant tracks at Conroe, Texas, Exhibit A–56.

The tracks owned by the Delta Land & Timber Company at Conroe, Texas, are laid with light rail on side and loading tracks, of 52 pound section. The rail on main track and curves is of 60 pound section. The frogs, guard rails, and switches are not in good condition. The ties are mostly oak or other hardwoods, with 16 to 18 per panel of 30 ft rail. The rail is badly worn, surface, bent, and kinked on sidings. The curves are partly tie plated. The track is surfaced with native soil of sandy material. The bridges are on frame bents and cribbing and are not in good condition.

There are no physical conditions which would prevent the Railway Company from performing the switching service at the plant of the Industry, but it would be necessary, to enable the Railway Company's engines to operate safely over the Industry's tracks, for the three bridges (two of which have 7″ x 14″ x 14′ 3-ply stringers and one of which has 12″ x 12″ x 14′ stringers) to be strengthened and the switches and rail be relaid with rail of heavier section.

Additional information requested by Director in connection with Foster Lumber Company's plant at Fostoria, Texas, Exhibit A–57.

The Industry's tracks are laid with 35 pound rail rolled in 1892. The frogs, guard rails, and switches are not in good condition. The ties are mixed pine and hardwood, with 17 ties per 30 ft. rail, in poor condition. The rail is decidedly worn, surface and line bent. The track is surfaced with native material.

There are no physical reasons why the Railway Company could not perform the switching service at points designated A and B, but before it could be safely done it would be necessary to relay the track and switches with heavier rail, renew a large percentage of ties, and improve surface conditions of the tracks.

Additional information requested by Director in connection with Hillyer Deutsch Edwards Lumber Company at Mab, Louisiana.

Tracks serving the plant of this company, Exhibit A–58, consist of second-hand 52 pound and 60 pound rail of mixed dates; ties of sawn and hewn oak and gum, 18 to 20 to the 30 ft. rail length, in fair condition. There are no tie plates on the curves. Surfaced with

native soil. Frogs, guard rails, and switches are in good condition and drainage in good condition.

There are no physical reasons which would prevent the Railway Company from performing the switching service at this plant; but it would be necessary to take care of the deferred maintenance of its tracks before this could be done with safety.

Additional information requested by Director in connection with Hillyer Deutsch Edwards Company's plant at Oakdale, Louisiana, Exhibit A–59.

Exhibit A–59 shows the trackage outlay of both the tracks owned by the Railway and those owned by the Industry.

The Industry's tracks are laid with second-hand 60 pound rail, considerably worn and bent from poor maintenance; principally hardwood ties are used, unplated, 15 to 18 ties per panel 30 ft. rail; the few bridges and culverts of light construction and in need of repairs.

My personal inspection of the trackage facilities at this plant indicates that there is no physical reason why the locomotives of the Railway Company could not perform the spotting service at the various points of loading or unloading within the industry, provided the Industry's tracks are placed in suitable condition, including lightening the degree of curvature of some curves.

Additional information requested by Director in connection with Industrial Lumber Company's plant, Elizabeth, Louisiana, Exhibit A–60.

The tracks serving this plant, as well as the Calcasieu Sulphate Paper Company, shown in solid lines on sketch, are owned by Railway Company and used by the Industrial Lumber Company in performing the switching service at its plant, are in operative condition.

The track which serves the fence mill (see letter "F," Exhibit A–60) indicated on the plat by light dashed lines, owned by the Industry—60 pound rail, reasonably well tied—but would need some repairs in event Santa Fe power were operated regularly over same.

The tracks serving the saw mill proper and the paper mill proper are in such physical condition, in my opinion, as to permit the Railway Company's power to operate over them without difficulty.

Additional information requested by Director in connection with the Jasper County Lumber Company's plant at Jasper, Texas, Exhibit A–61.

An inspection of the trackage, both of the Railway Company and of the Industry, serving the Jasper County Lumber Company Limited, Jasper, Texas, as shown on Exhibit A–61, indicates that the Industry's portion of these switch tracks is of light construction, of 52 pound and 56 pound rail in loading tracks and 60 pound rail in main track, with pine, oak, and gum ties, 16, 18, and 20 ties per 30 ft. panel, maintained in fair condition. The curves are tie plated and the bridge across Sandy Creek is built with 4-pile bents and 2-ply chord stringers, ties and guard rails on which are new. The curves of the track have been recently re-tied and resurfaced.

There are no physical conditions which would prevent tracks being maintained in safe condition for use by Santa Fe engines.

Additional information requested by Director in connection with Kirby Lumber Company's plant at Silsbee, Texas, Exhibit A–62.

Exhibit A–62 shows in detail the trackage layout of the Kirby Lumber Company at Silsbee, Texas, the solid lines indicating tracks owned by the Santa Fe Railway Company and those of the Industry indicated by broken dashed lines; such plant tracks being laid with 45 pound and 52 pound rail, worn and surface bent. Ties in plant tracks are hardwood and pine, very bad condition. Small bridges and culverts are in poor condition and badly in need of repairs.

There is no physical difficulty at this plant which would prohibit the Railway Company from performing the switching service at this plant with its own power, if proper repairs were made to the Industry's tracks.

Additional information requested by Director in connection with Kirby Lumber Company's plant at Voth, Texas, Exhibit A–63.

A personal inspection within the last ten days of the track layout at this point as shown by Exhibit A–63 reveals that the Industry portion of these switch tracks is laid with light weight, second-hand rail, and very poor maintenance is evident.

There is no physical condition to prevent the Railway Company performing the switching service at this plant, provided there are substantial tie renewals on the Industry's portion of such tracks leading to the loading points. Frogs, guard rails, and switch points are not in good condition and would require some renewals and improvements to permit the Santa Fe heavier power to safely operate over the Industry's portion of such tracks and bridges.

That portion of the track in solid lines is owned by the Railway Company and is laid with 85 pound second relay rail and is in fair condition.

Additional information requested by Director in connection with Kirby Lumber Company's plants at Call and Call Junction, Texas, Exhibit A–64.

Exhibit A–64 shows the G. C. & S. F. and the Kirby Lumber Company's combined trackage outlay serving the industry at Call, Texas. As indicated by the legend on the map, the solid lines represent trackage owned by the Railway, the light, short, dashed lines the trackage owned by the Industry.

There is no physical condition which would prohibit the Railway from performing the switching or spotting service, provided the industry trackage were placed in suitable physical condition. The industry tracks are laid with second-hand light weight 45 pound and 52 pound rail, and tie conditions are poor.

If the Railway Company should perform, with its heavier locomotives, the switching service to and from loading points designated "A," "B," "C," and "D" on the sketch, safe operation would require

a higher standard of maintaining the track and bridges than that which at present obtains at this mill, both as to Railway Company trackage and Industry-owned trackage.

Additional information requested by Director in connection with Temple Lumber Company's plant at Pineland, Texas, Exhibit A–65.

The tracks of the Temple Lumber Company at Pineland, Texas, are laid with light weight rail, mostly 45 pound to 50 pound section; although some of the curves have been relaid with 60 pound relay rail. The ties are mixed untreated oak and gum, in fairly good condition. Tie plates have been applied to the ties on curves. Frogs, guard rails, and switches are in poor condition. Track surfaced with native soil.

There are two bridges containing 4-pile bents, 3-ply chords, 7″×14″–28′ stringers, which are in good condition.

Before Santa Fe engines could safely operate over the tracks to reach the new planer location, marked "C" on Exhibit A–65, existing rail and switches would have to be relaid with rail of heavier section; a considerable percentage of the ties renewed and the track resurfaced out of face; bridges strengthened by adding additional stringers.

There are no physical conditions which would prevent the Railway from performing the switching service, if the bridges and track were improved as indicated above.

Additional information requested by Director in connection with Kirby Lumber Company plant at Merryville, Louisiana (pine and hardwood mills), Exhibits A–67 and A–66.

Exhibits A–67 and A–66, respectively, the hardwood and pine lumber mills of the Kirby Lumber Company located at Merryville, Louisiana, as indicated by these prints, for the most part, particularly in the case of the pine mill—the tracks are owned by the Railway and maintained in fair condition.

There is no physical condition which would prohibit the Railway's locomotives from performing the switching or spotting service at either of those industries. In the interest of safety and more expeditious operation of heavier locomotives, it would be desirable for some repairs in the way of tie renewals and heavier rail to be made on the plant tracks.

815–QQ JASPER COUNTY LUMBER COMPANY, INC.,
Jasper, Texas, May 19, 1932.

Mr. JAMES A. LAWSON,
520 Federal Building, Dallas, Texas.

DEAR MR. LAWSON: With reference to my statement made at Galveston, Tuesday the 17th, when before the examiners of the Interstate Commerce Commission relative to the number of railroad bridges between the loading point and the point of delivery as located in our tracks.

My answer to the question was that we only had one bridge, and such bridge was located over Sandy Creek. I was perfectly conscientious in making this statement, but after the question arose that there were two bridges in the track I immediately investigated upon my return back to Jasper, and I am very frank to say that there is two instead of one. This bridge in question that I did not know about is not a bridge that has been driven with pilings but is only a short one bent bridge fourteen foot in length, and the purpose of this bridge, in my opinion, is more or less a culvert to take care of the waste water from the highway. I am certainly sorry that I made this mistake in my statement, but since I could not recall of another driven bridge being in our track outside of the one across Sandy Creek located in our switching yards I suppose is what made me make this statement.

There is one other correction that I would like to make, but of course it is not important, and that is, I made the statement that our tracks crossed Highway No. 45 between the loading point and delivery point. Instead of this being Highway No. 45 it should be Highway No. 63, so will you kindly have the court reporter scratch this from the records and make this correction.

As per your request I am enclosing you two copies of this letter, one copy for your files and one copy to be filed with the Interstate Commerce Commission at Washington.

I was pleased to have made your acquaintance while in Galveston, and I trust that I shall have the opportunity of seeing you again.

Witht kindest regards, I am

Yours very truly,

JASPER COUNTY LUMBER COMPANY,
Per W. A. LATHAM, *Manager*.

815–SS *Exhibit A–116*

I. C. C. Case—Ex Parte 104–2. Exhibit No. A–116

Statement showing expense to the Gulf Refining Company of providing engine service at their Port Arthur plant—as determined by a cost study—November 5th to 14th, 1923.

Cost of locomotive	$52,924.89
Date of purchase	February 28th, 1919–November 28th, 1922
Name of builder	Baldwin Locomotive Works
Wages yardmaster, engine watchman, and switch crew	$945.66
Fuel, water, and lubrication	190.31
Repairs to locomotive	81.29
Depreciation @ 4½% per annum	65.27
Interest @ 5½% per annum	79.77
Taxes	21.32
Other engine and yard expense	3.48
Supervision @ 10%	138.71
Total	1,525.81
Engine hours	156'15"
Average engine hour cost	$9.765

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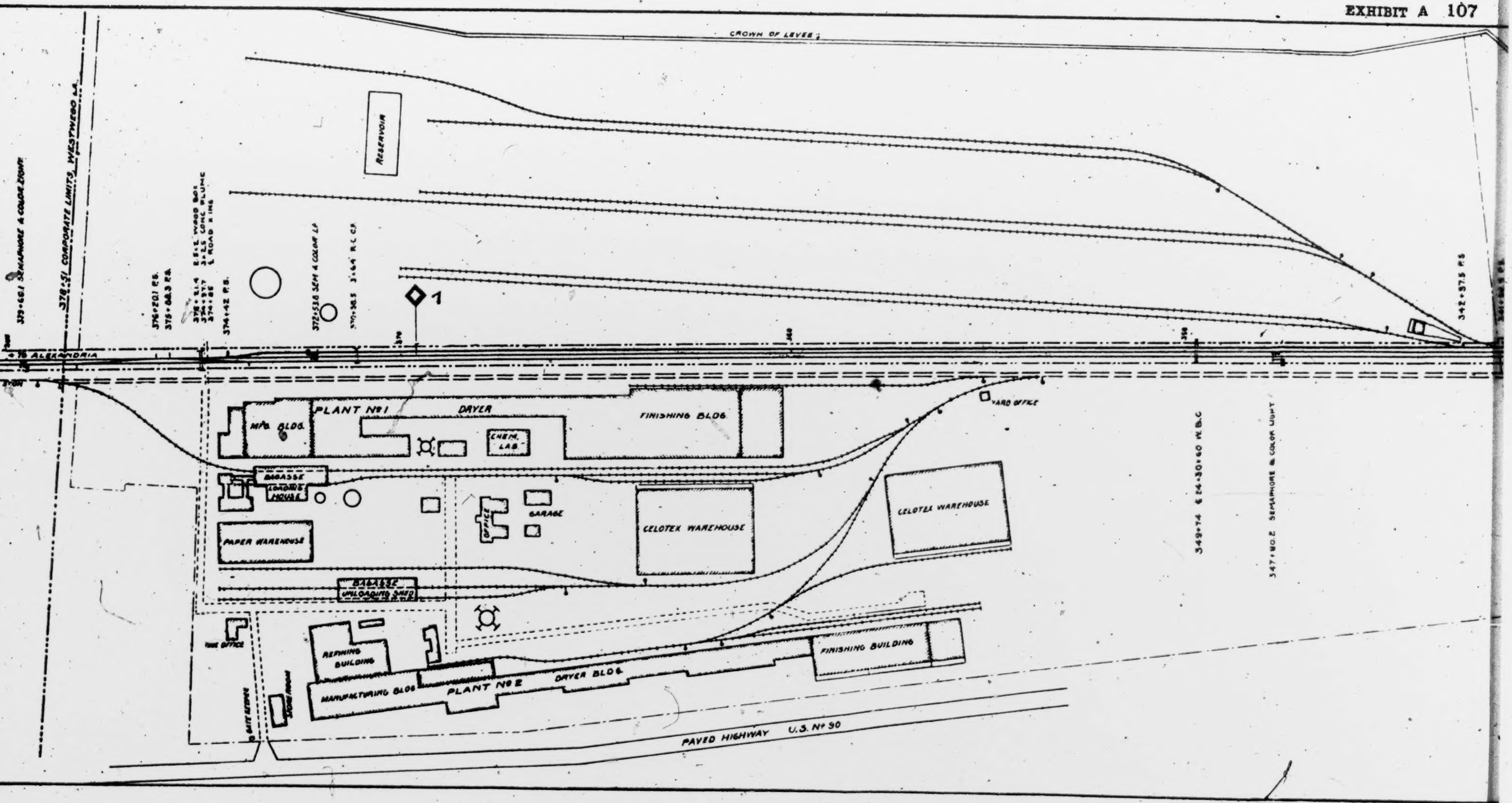
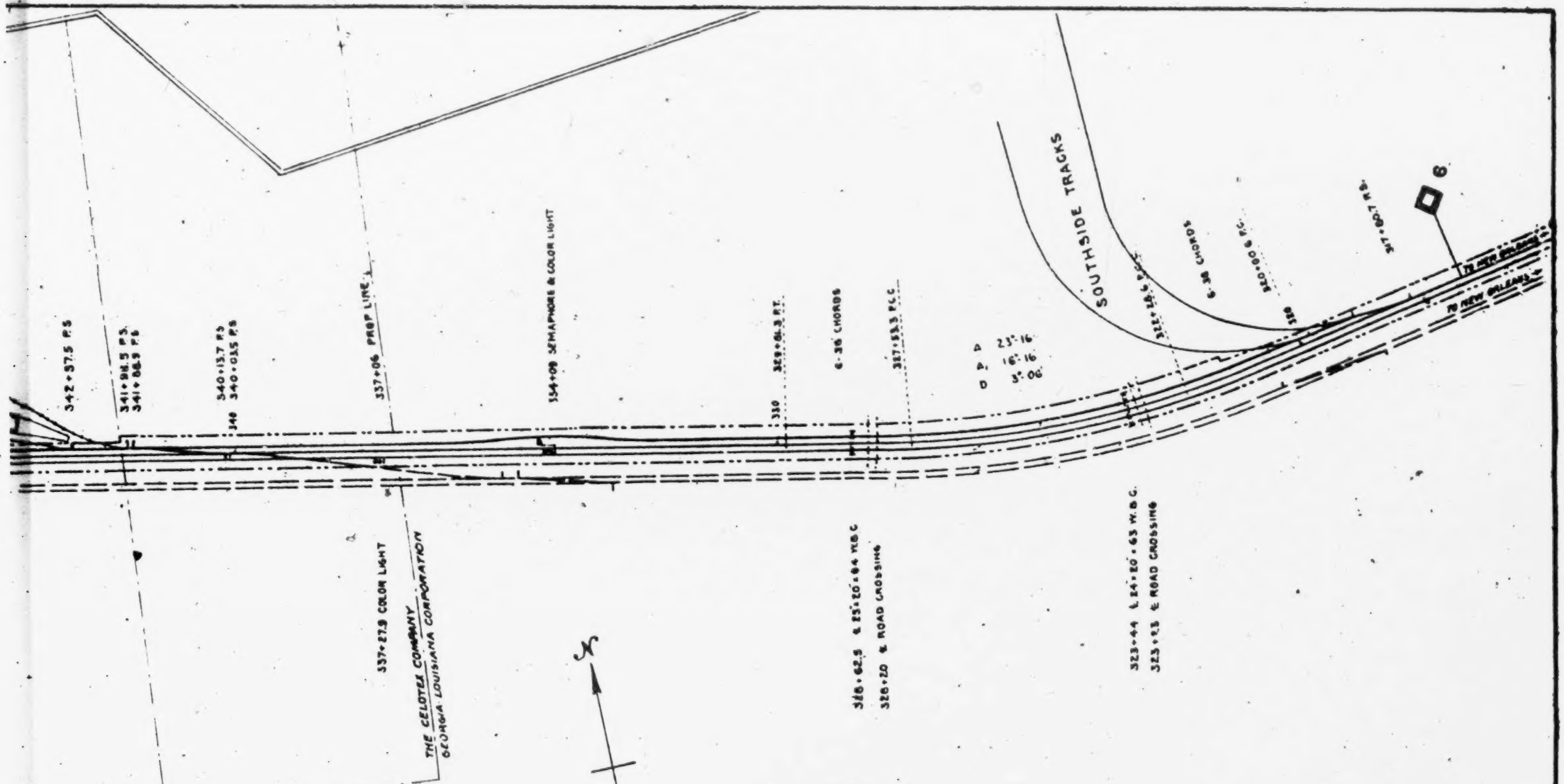

CROWN OF LEVEE
RESERVOIR
1
PLANT No 1
DRYER
MFG. BLDG.
CHEM. LAB.
FINISHING BLDG.
YARD OFFICE
BAGASSE
LOADING HOUSE
GARAGE
OFFICE
PAPER WAREHOUSE
CELOTEX WAREHOUSE
CELOTEX WAREHOUSE
BAGASSE UNLOADING SHED
TIME OFFICE
REFINING BUILDING
FINISHING BUILDING
MANUFACTURING BLDG.
PLANT No 2
DRYER BLDG.
SCALE HOUSE
GATE KEEPER
PAVED HIGHWAY U.S. No 90
ALEXANDRIA
378+51 CORPORATE LIMITS WESTWEGO
349+74 & 24+30+60 M.B.C.
347+80.2 SEMAPHORE & COLOR LIGHT
342+57.5 P.S.



LEGEND

T.P.-M.P.T.R.R. TRACKS
T. & N.O. R.R. TRACKS
CELOTEX CO. TRACKS
TRACKS USED JOINTLY BY T.P.-M.P.T.R.R. & CELOTEX CO.
T.P.-M.P.T.R.R.-CELOTEX CO. INTERCHANGE TRACK

TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL R.R OF N. O.,
TRACKS SERVING THE CELOTEX COMPANY
MARRERO, LA.
Office of Terminal Engineer — New Orleans, La.
Scale 1" = 200' — May 12, 1932
C.A.H.

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PAGE

	Cars handled			Engine time consumed			Cost per eng. hour	Engine cost		
	Loads	Empt.	Total	Loaded cars	Empty cars	Total		Loaded cars	Empty cars	Total
				Ft. In.	*Ft. in.*	*Ft. In.*				
Rwys	807	646	1,453	52 23	33 23	85. 46	$9.765	$511.54	$326.00	$837.54
G. Co	172	394	566	17 18	24 41	41 59		168.94	241.03	409.97
Total	979	1,040	2,019	69 41	58 04	127 45	9.765	680.48	567.03	1,247.51

	Cost per car			Cost per loaded car (including cost per empty car)	Idle engine time chargeable to industry and not considered	Amount of allowance
	Loaded cars	Empty cars	Loaded and empty			
					Ft. In.	
Rwys	$0.634	$0.505	$0.577	$1.038		
G. Co	.982	.612	.724	2.384		
Total	.695	.545	.618	1.274	28 30	0.90

OFFICE OF THIRD VICE-PRESIDENT. *May 21st, 1923.*

815–AAA *Exhibit being tariff of Yazoo & Mississippi Valley cancelling allowances effective August 22, 1935*

Filed August 19, 1935

Illinois Central Railroad Company (Southern Lines), the Yazoo and Mississippi Valley Railroad Company. Third Revised Page 171–B. Cancels Second Revised Page 171–B. Tariff No. 2–B. I. C. C. No. 6700.

Terminal allowances to the Pan-American Petroleum Corporation at Destrehan, La., effective October 17, 1934. [1] Cancel. Allowance discontinued. Issued July 19, 1935. Effective August 22, 1935. Issued in compliance with order of the Interstate Commerce Commission in Ex Parte No. 104, Sixteenth supplemental report, of June 25, 1935. Issued by R. A. Trovillion, General Freight Agent. 135 East Eleventh Place, Chicago, Ill. (File Ex Parte 104) (Part 2) (Terminal Services).

815–BBB. *Exhibit being tariff schedules of defendant carriers providing for allowance and described as second and third revised pages 175–B of tariff I. C. C. No. 6700*

INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the pages of schedule hereto attached and more particularly hereinafter described, are true copies

[1] Increase.

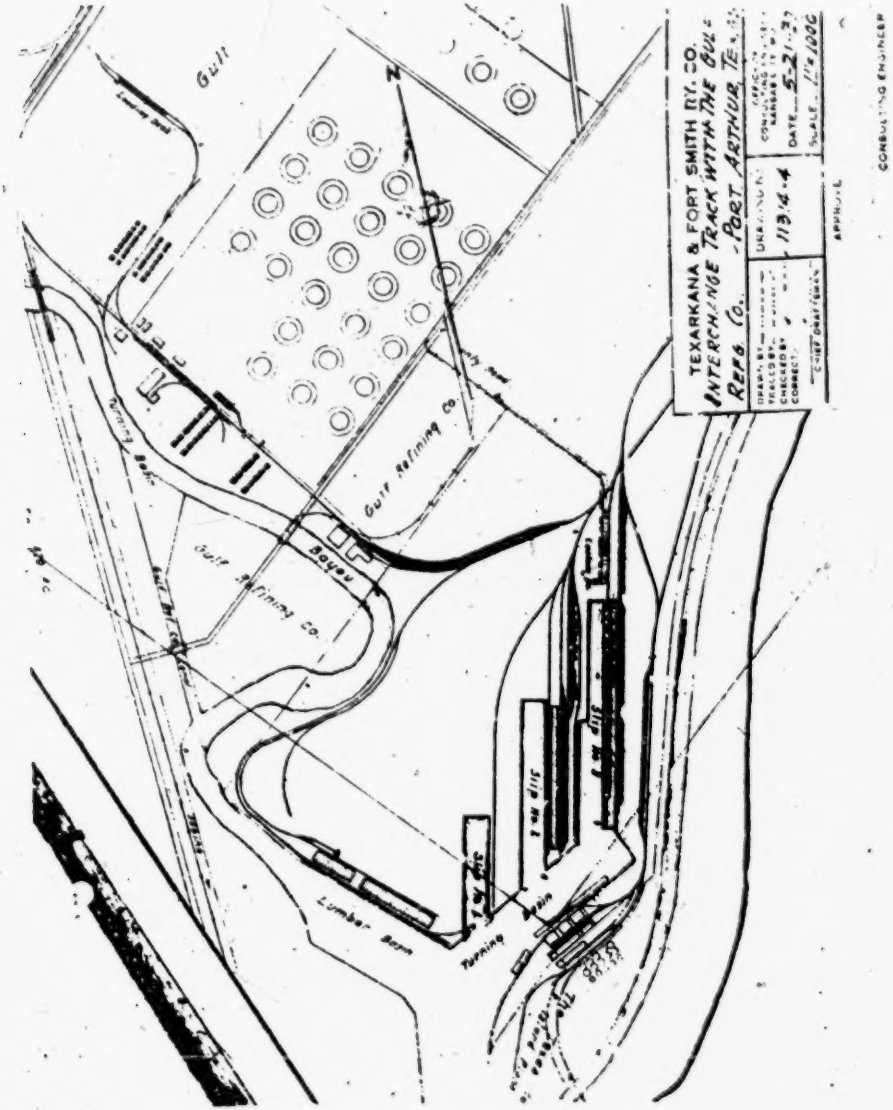
Gulf
N
Gulf Refining Co
Boyou
Gulf Refining Co.
Lumber Basin
Turning
TEXARKANA & FORT SMITH RY. CO.
INTERCHANGE TRACK WITH THE GULF
REFG. CO.
PORT ARTHUR TEX.
DRAWN BY
TRACED
CHECKED
CORRECT
DRAWING NO.
113-4-4
DATE 5-21-37
SCALE 1"=100'
APPROVED
CONSULTING ENGINEER

EXHIBIT A-117

ICC Case - Ex Parte 104-2
Exhibit No. A-117

Statement showing expense to Texas Company of providing switch engine service at their Port Arthur Refinery - as determined by a cost study - November 20th to December 1st 1923.

Cost of three locomotives - $ 22,658.00
Date of Purchase - January 1910, November 1912, April 1920.

Wages of Yardmasters, Clerks, Watchmen, Engineer and Switchmen,	$ 953.12
Fuel,	204.28
Water,	8.64
Lubricants and other supplies,	5.19
Repairs,	280.18
Depreciation @ 4½% per annum	33.52
Interest @ 5% per annum,	40.98
Taxes,	10.95
Supervision @ 10%,	155.08
TOTAL.....	$1705.94

Engine Hours - 250° 05"
Average Engine Hour Cost - $6.822

	Cars Handled.			Engine Time Consumed			Cost Per Eng. Hour	Engine Cost.		
	Loads	Empts.	Total	Loaded Cars	Empty Cars	Total -		Loaded Cars	Empty Cars	Total -
Roya.	793	836	1629	67° 10"	68° 40"	135° 50"	$6.822	$458.18	$468.42	$ 926.60
T. Co.	146	604	750	20° 14"	36° 57"	56° 09"	-	137.79	865.70	403.49
TOTAL	939	1440	2379	87° 22"	107° 37"	194° 59"	$6.822	$595.97	$734.12	$1330.09

	Cost Per Car.			Cost per Loaded car, (Including cost of empty car)	Idle Engine Time Chargeable to Industry and not Considered.	Amount of Allowance.
	Loaded Cars	Empty Cars	Total -			
Roya.	.577	.560	.568	$ 1.168		
T. Co.	.944	.440	.536	.764		
T. L.	.635	.510	.559	$ 1.618	55° - 00"	.90

Office of Third Vice-President,
May 21st 1932.

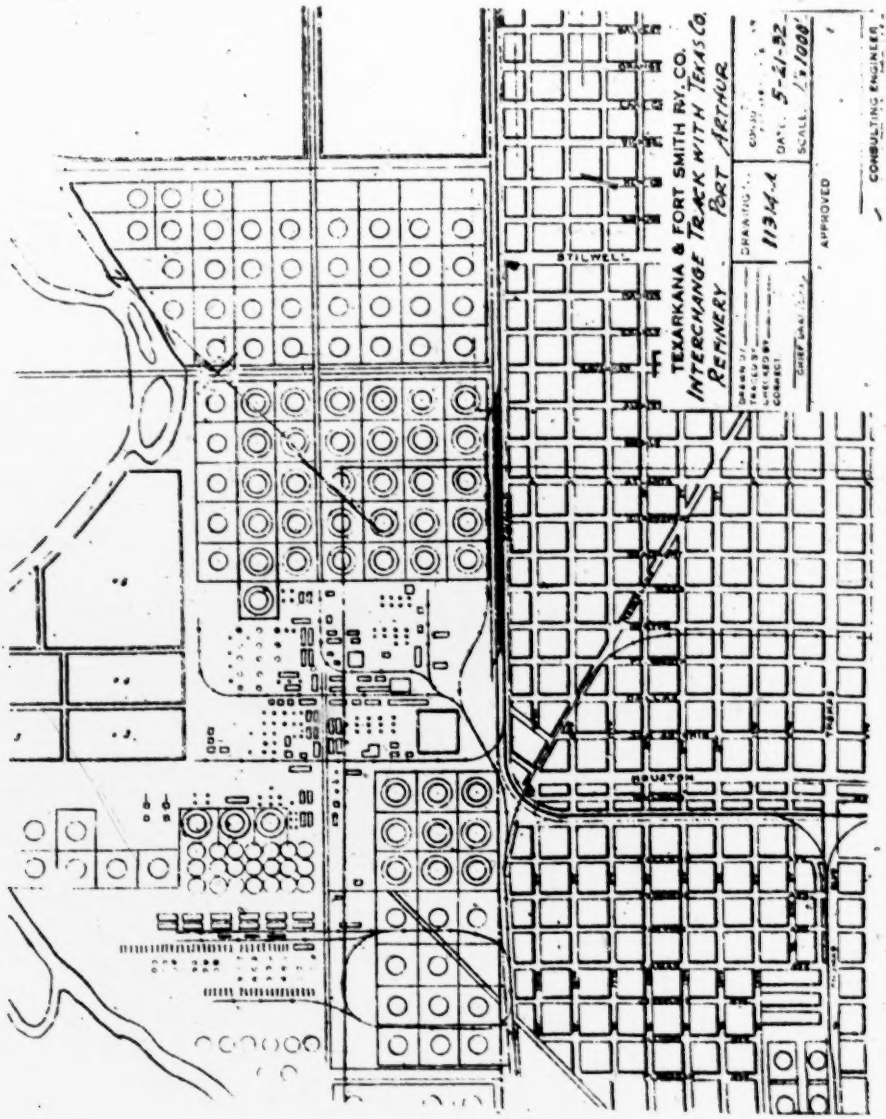
TEXARKANA & FORT SMITH RY. CO.
INTERCHANGE TRACK WITH TEXAS CO.
REFINERY
PORT ARTHUR
DRAWING
DATE 5-21-32
SCALE 1"=1000'
APPROVED
CONSULTING ENGINEER
STILWELL
HOUSTON

EXHIBIT A 118

ICC Case - Ex Parte 104-A
Exhibit No. A 118

Statement showing expense to the Texas Company of Providing switch engine service at their Island Plant - as determined by a cost study - December 10th to 17th, 1923.

Cost of Locomotive	-	$ 5,660.57
Date of Purchase	-	July 1916.

Wages Engineman and Switchmen	$ 229.48
Fuel	55.46
Water	3.60
Lubricants, etc.	7.50
Repairs to Locomotive	29.95
Depreciation @ 4½% per annum	5.58
Interest @ 5½% per annum	7.11
Taxes	1.68
Supervision - 10%	34.01
TOTAL.....	$ 374.06

Engine Hours - 90' 40"
Average engine hour cost- $4.126

	Cars-Handled			Engine time Consumed			Cost Per Eng. Hour	Engine Cost		
	Loads	Mpts.	Total	Loaded Cars	Empty Cars	Total -		Loaded Cars	Empty Cars	Total -
T&PS	160	132	292	25' 57"	14' 04"	40' 01"	$4.126	$ 107.06	58.04	$ 165.10
T.Co.	70	24	94	6' 10"	2' 53"	9' 03"	-	25.44	11.90	37.34
TOTAL	230	156	386	32' 07"	16' 57"	49' 04"	$4.126	$ 132.50	$ 69.94	$ 202.44

	Cost per car.			Cost per Loaded cars (Including cost of Empty cars)	Idle Engine Time Chargeable to Industry and not considered.	Amount of Allowance.
	Loaded Cars	Empty Cars	Loaded and Empty			
T&PS	.669	.440	.565	$1.032		
T.Co.	.363	.496	.397	.933		
TOTAL	.576	.449	.524	.880		
					41' 36"	CO

Office of Third Vice-President,
May 31st 1932.

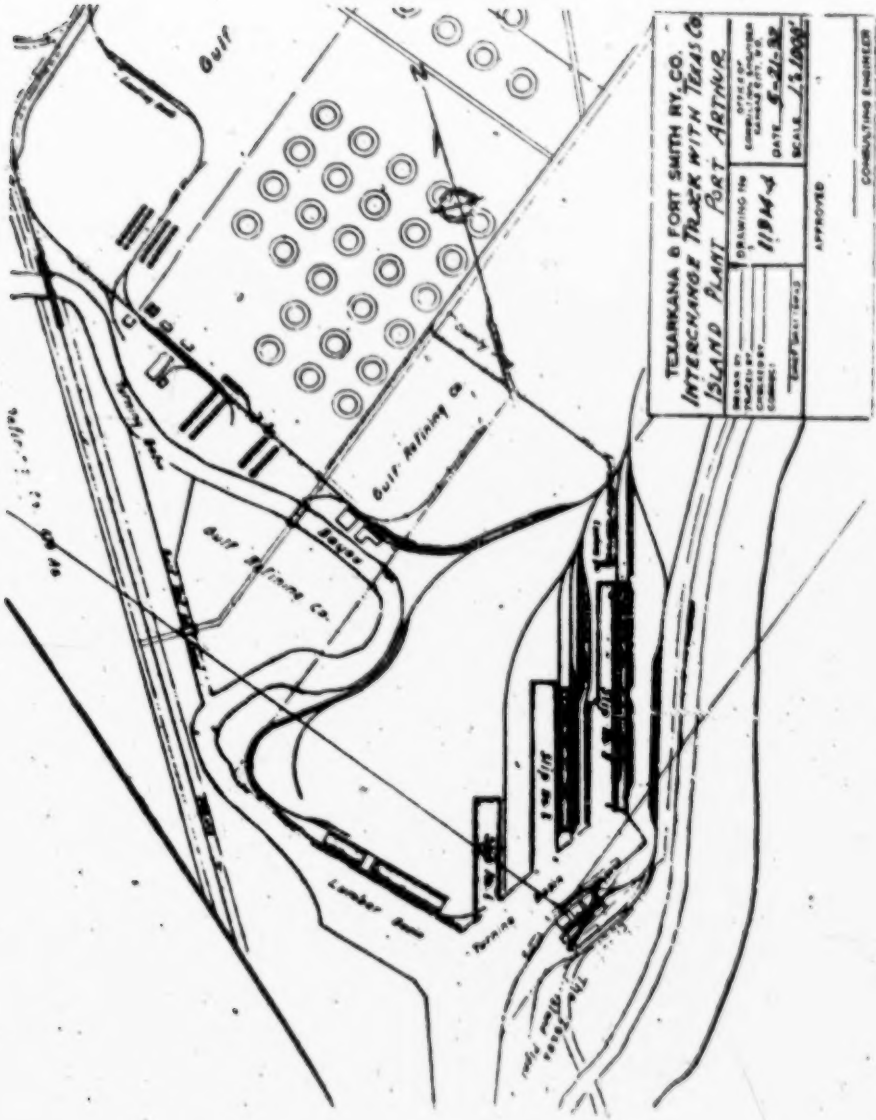
Gulf
Gulf Refining Co.
Gulf Refining Co.
Lumber Dock
TEXARKANA & FORT SMITH RY. CO.
INTERCHANGE TRACK WITH TEXAS CO
ISLAND PLANT PORT ARTHUR
DRAWING NO.
11944
DATE 5-21-32
SCALE 1" = 100'
APPROVED
CONSULTING ENGINEER

EXHIBIT A 119

ICC Case - Ex Parte 104-A
Exhibit No. A 119

Statement showing expense to Texas Company of providing switch engine service at their Asphalt plant - as determined by a cost study - December 4th to 14th, 1923.

Cost of two locomotives - $ 12,505.00
Date of Purchase - (July 15th 1909
(Oct. 5th 1916

Wages Enginemen, switchmen, Yardmaster, Yard Clerks and Hostlers	$ 443.23
Fuel	211.64
Water	9.17
Lubricants and other Supplies	14.54
Repairs	211.36
Depreciation @ 4½% per annum	16.95
Interest @ 5% per annum	20.73
Taxes	6.78
Supervision - 10%	93.44
TOTAL.....	$1027.82

Engine Hours - 234' 05"
Average engine hour cost- $4.391

	Cars Handled.			Engine Time Consumed			Cost For Eng. Hour	Engine Cost.		
	Loads	Empts.	Total	Loaded Cars	Empty Cars	Total -		Loaded Cars	Empty Cars	Total -
TAPS	288	192	480	40' 15"	45' 52"	86' 07"	$4.391	$176.72	$201.40	$ 378.13
TCo.-RR Cars	176	397	573	21' 44"	21' 02"	42' 46"	-	95.43	92.35	187.78
TOTAL T.Co	464	589	1053	61' 59"	66' 54"	128' 53"	$4.391	$272.16	$293.75	$ 565.91
Plant Cars.	920	479	1399	40' 14"	15' 39"	55' 53"	-	$176.66	$ 68.72	$ 245.38

	Cost per Car.			Cost per loaded car (Including cost of empty car)	Idle Engine Time Chargable to Industry and not considered.	Amount of Allowance.
	Loaded Cars -	Empty Cars. -	Loaded and Empty			
TAPS	.614	1.101	.786	$ 1.215		
T. Co	.542	.233	.326	1.067		
TOTAL	.587	.419	.537	$ 1.130		
					49' - 19"	$1.00

Office of Third Vice-President,
May 21st 1932.

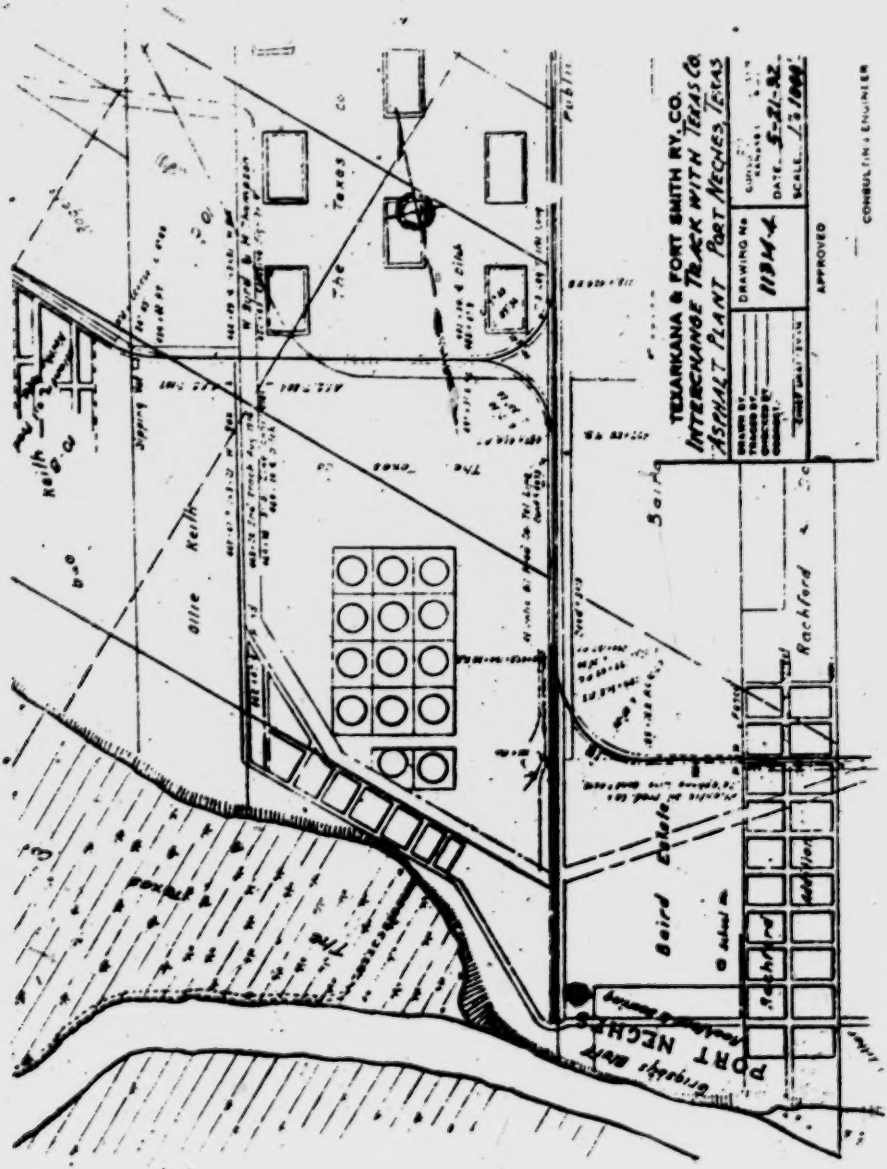
TEXARKANA & FORT SMITH RY. CO.
INTERCHANGE TRACK WITH TEXAS CO.
ASPHALT PLANT PORT NECHES, TEXAS
DRAWING NO
11344
DATE 5-21-42
SCALE 1"=100'
APPROVED
CONSULTING ENGINEER
Texas
Ollie Keith
Rockford
Baird
PORT NECHES

EXHIBIT A - 120

ICC Case - Ex Parte 104
Exhibit No. A-120

Statement showing expense to the Pure Oil Company of providing Switch engine service at their Smiths Bluff Plant - as determined by a cost study - July 10th to 17th, 1924.

Cost of Locomotives -	$11,625
Date of Purchase -	March 20th 1923
Name of Builder -	Baldwin Locomotive Works

Wages Engineer and Engineman	$132.75
Fuel Oil Consumed	43.56
Lubricating Oil, Water and Other Supplies	3.46
Locomotive Repairs	147.03
Labor - $102.86	
Material - 44.17	
Depreciation @ 4½% per annum	8.19
Interest @ 5% per annum	12.22
Taxes - 80% of valuation $2.45 per $100 value	3.28
General Supervision on Labor - 20%	23.56
TOTAL.....	$374.05

Engine Hours - 72
Average engine hour cost $5.16

	Cars Handled			Engine Time Consumed			Cost Per Eng. Hour	Hauling Cost		
	Loads	Empts	Total	Loaded Cars	Empty Cars	Total		Loaded Cars	Empty Cars	Total
T&PS	58	56	114	4' 12"	6' 35"	10' 47"	$5.16	$21.67	$33.97	$55.64
PC Co	15	36	49	41"	1' 44"	2' 85"		3.53	8.94	12.47
TOTAL	70	93	163	5' 53"	8' 19"	13' 12"	$5.16	$25.20	$42.91	$68.11

	Cost Per Car			Cost Per Loaded Car (Including Cost of Empty Car)	Idle Engine Time Chargeable to Industry and not considered.	Amount of Allowance
	Loaded Cars	Empty Cars	Loaded and Empty			
T&PS	.394	.576	.488	$1.011		
PC Co.	.234	.368	.254	.891		
TOTAL	.36	.461	.418	.972		
					59' 16"	.9C

- - - - - - - - - - - - - -

Office of Third Vice-President,
May 21st 1932.

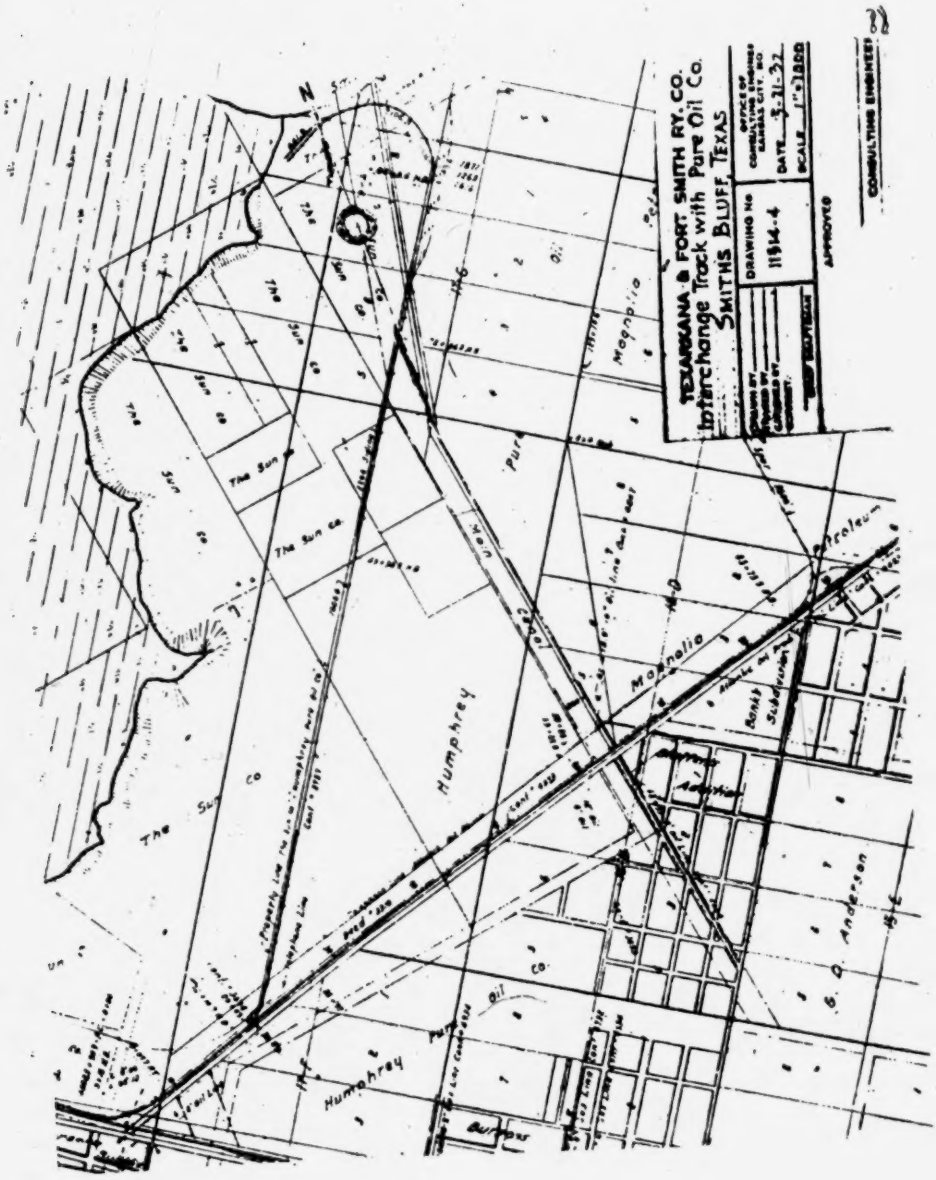
TEXARKANA & FORT SMITH RY. CO.
Interchange Track with Pure Oil Co.
SMITHS BLUFF, TEXAS
DRAWING NO 11914-4
DATE 5-31-32
SCALE 1"=100'
APPROVED
CONSULTING ENGINEER
N
The Sun Co
Humphrey
Magnolia
Pure Oil
Anderson
Burton

EXHIBIT A-121

ICC Case - Ex Parte 104-A
Exhibit No. A-121.

Statement showing expense to the Magnolia Petroleum Company of providing engine service at their Chelsea plant - as determined by a cost study - March 25th to 31st 1924.

Yardmaster and Crews		$2,961.47
Fuel		1,090.47
Lubrication		16.50
Repairs		1,264.72
Labor - $904.40		
Material- 360.32		
Depreciation		189.84
Interest		234.02
Taxes		62.00
Clerk Hire		230.00
General Supervision		409.59
TOTAL		$6,456.61

Engine Hours - 944½
Average engine hour cost - $6.85

	Cars Handled.			Engine Time Consumed			Cost Per Eng. Hour	Engine Cost		
	Loads	Empts.	Total	Loaded Cars	Empty Cars	Total -		Loaded Cars	Empty Cars	Total -
Rays.	344	295	639	23' 21"	27' 23"	50'44"	$6.85	$159.95	187.57	347.52
M.P.Co.	162	350	512	12' 37"	16' 38"	29'15"	-	86.42	113.94	200.36
TOTAL	506	645	1151	35' 58"	44' 01"	79'59"	$6.85	$246.37	301.51	547.88

	Cost per Car			Cost Per Loaded car (Including cost per empty car)	Idle Engine Time Chargeable to industry and not Considered.	Amount of Allowance.
	Loaded Cars	Empty Cars	Total -			
Rays.	.465	.635	.544	$1.010		
M.P. Co.	.533	.325	.391	1.237		
TOTAL	.487	.467	.476	$1.063	32' 31"	.90

Office of Third Vice-President,
March 21st 1932.

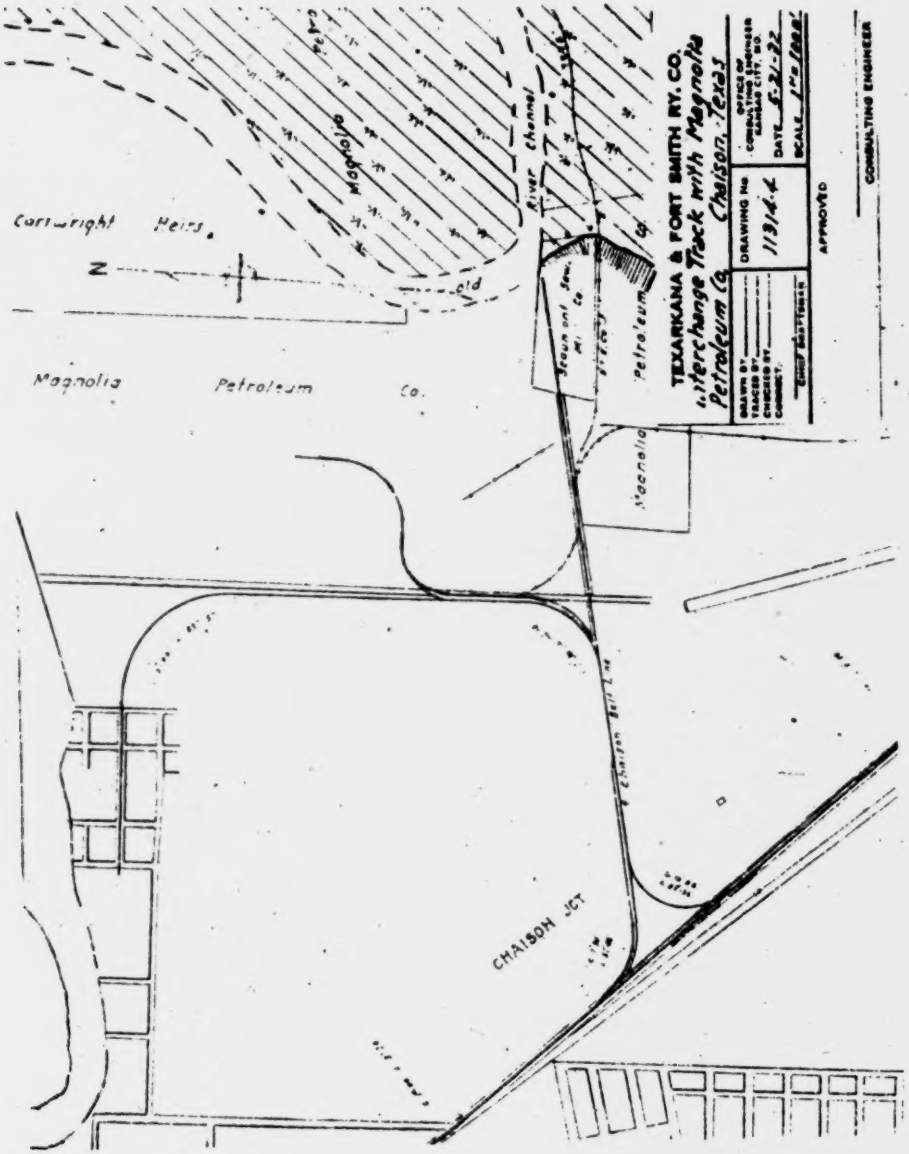
TEXARKANA & FORT SMITH RY. CO.
Interchange Track with Magnolia Petroleum Co.
Chaison, Texas
DRAWING No 113/6-4
DATE 5-21-32
SCALE 1" = 100'
APPROVED
CONSULTING ENGINEER
Cartwright Heirs
Magnolia Petroleum Co.
Magnolia Petroleum
River Channel
Old
CHAISON JCT

EXHIBIT A 122

Q-122 (15)

MAGNOLIA PETROLEUM COMPANY

Dallas, Texas, April 27, 1923

Chaison Switching.

Mr. J. F. Jolden, VP,
Kas City Southern Ry,
Kansas City, Mo.

Dear Sir:

No doubt, you are aware of the fact that for many years we have performed the service of spotting empties for loading, loads for unloading, and removing the resulting empty and loaded cars to carriers connections at our Chaison refinery with our own switch engines.

Our switch engines are rather old and in poor condition and more than a year ago we considered proposing to the carriers that they perform this service, as all of it is done on tracks easily accessible and in suitable condition for the operation of the carriers switch engines, which would relieve our engines for intra plant switching, which of course is of no concern to the carriers.

We discussed this matter slightly with your Mr. J. O. Hamilton, as well as Mr. Dunlap of the Southern Pacific Lines, with a view of having a joint inspection of the situation by the operating officials of the two roads serving our refinery. Unfortunately, your Mr. Williams could not be reached the morning Mr. G. S. Waid, other operating officers and traffic officials of the T&NO Railroad Company made an inspection of the tracks and operating conditions at Chaison, Texas.

It was our idea to have the carriers perform the spotting service referred to above, which is a terminal service, properly a duty and ordinarily performed by the carriers. Mr. Waid acknowledged that the spotting service we were performing was properly a duty of the carriers, but proposed that we continue to perform the service at our plant for the reason that in his opinion our engines could do it more economically and efficiently than it could be done by the carriers, and permit the T&NO Railroad Company to compensate us for the service performed.

Mr. Waids proposal being entirely different from the idea we had in view when negotiations were first opened, we felt possibly it would be better to reach a definite conclusion with the T&NO Railroad Company before bringing the matter again to

JFHolden #2

the attention of your line. We also felt some misgivings as to the legality of accepting compensation proposed by Mr? Weid, which he stated and was supported by an opinion from the General Attorneys of the Southern Pacific Lines, Baker, Potts, Parker and Garwood, could be handled as a matter of contract. This did not agree with the opinion of our attorneys, and it was finally submitted to the Interstate Commerce Commission in an agreed statement of facts, signed by the Magnolia Petroleum Company and the General Attorneys of the Southern Pacific Lines. The Interstate Commerce Commission stated, as indicated by copy of letter attached, that if covered by proper tariff publication the payment of compensation to our company for performing the service would not result in any violation of the law.

We have now received a copy of the tariff which the Southern Pacific proposes to file to cover the compensation, which we must admit appeals to us from a standpoint of convenience, and feeling that your Company, no doubt, would desire to make the same arrangement, rather than have your engines perform the service while the T&NO pays our company for performing the service for it, as it would probably create some inconvenience in the switching operation, we are submitting the matter for your consideration.

I wired you yesterday with the view of discussing the matter personally, however, as I was advised you would not be in Kansas City until Saturday, April 28, and would be in New Orleans on May end, it was impossible for me to see you. Should you desire to go into the matter in detail, joining with your operating officials in making an inspection of the service performed at the Chaison refinery, I will be glad to meet you in Beaumont on your return from New Orleans if you will advise me just when it will suitbyour convenience.

Yours very truly,

(Signed) W.M.Maddox

WMM;F Asst. Traffic Manager.

Copied from file 7113 in office of
H.W.Weaver, KCS, in Kas City, Mo.
WSR.

EXHIBIT A - 123

A/23 Weaver C

COPY

June 1, 1923

Mr. L. F. Loree,
Chairman, Executive Committee,
25 Broad Street, New York City.

Dear Sir:

You will recall that I spoke to you about the action of the Southern Pacific in making an allowance to the Magnolia Petroleum Company for switching loads in and out of their plant at Chaison. You suggested that I write you fully concerning the circumstances so that you might discuss with Mr. Kruttschnitt.

I am enclosing herewith copy of letter addressed to Vice President Holden by the Assistant Traffic Manager of the Magnolia Petroleum Company under date of April 27, which is the first advice we had. Copy of Southern Pacific tariff No. 717 is enclosed; also copy of our tariff No. 2360 covering similar action which was necessary for us to take.

This movement of the Southern Pacific puts quite a burden on the railroads as it means similar action at all the refineries we serve in the Beaumont-Port Arthur District. Their allowance id predicated on the theory that carriers must deliver and receive loads at loading and unloading points either on their own rails or on rails which have been furnished by the industrial plant; that the duty of the carrier is not completed until such delivery is effected; and if an industry would relieve the carrier of this expense it is entitled to compensation therefor.

The Gulf Refining Company and the Texas Company have been notified of our willingness to grant them the same concession but neither of them have asked us to act thereon. They simply acknowledged receipt of our communication, stating that they would go into th matter and advise us definitely which has not yet been done.

Yours very truly,

)Signed(J.A.Edson

Copied from file 2692 in office of
H.A.Weaver, KCB, in Kansas City, Mo.
WSR.

44090—38——30

of pages of schedule filed with the said Interstate Commerce Commission on dates specified below, to wit:

Second Revised Page 171–B of Illinois Central R. R. Co. (Southern Lines), The Yazoo and Mississippi Valley R. R. Co., Rules and Regulations Tariff No. 2–B, I. C. C. No. 6700, said page having been filed September 13, 1934.

Third Revised Page 171–B of Illinois Central R. R. Co. (Southern Lines), The Yazoo and Mississippi Valley R. R. Co., Rules and Regulations Tariff No. 2–B, I. C. C. No. 6700, said page having been filed September 13, 1934.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of August, A. D., 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

Illinois Central Railroad Company (Southern Lines). The Yazoo and Mississippi Valley Railroad Company. Second Revised Page 171–B. Cancels First Revised Page 171–B. Tariff No. 2–B, I. C. C. No. 6700.

Terminal allowances to the Pan-American Petroleum Corporation [2] at Destrehan, La.

On traffic to and from points on or reached via The Yazoo and Mississippi Valley Railroad Company or connections.

On all carload shipments (including trap cars containing 10,000 pounds or more of less-carload freight) destined to or coming from the plant of the Pan-American Petroleum Corporation [2] at Destrehan, La., the terminal switching service is performed by the Pan-American Petroleum Corporation [2] for account of The Yazoo and Mississippi Valley Railroad Company. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for The Yazoo and Mississippi Valley Railroad Company by the Pan-American Petroleum Corporation [2] at Destrehan, La., the Pan-American Petroleum Corporation [2] will be allowed 90 cents per loaded car, which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operations of the plant facility made during period, June 4, 1929, to June 8, 1929, inclusive, also June 10, 1929, and filed with the Interstate Commerce Commission.

Issued September 12, 1934. Effective October 17, 1934. (File GF–120–Destrehan, La.) Issued by J. L. Sheppard, General Freight Agent, 135 East Eleventh Place, Chicago, Ill.

[2] Formerly Mexican Petroleum Corporation of Louisiana.

Illinois Central Railroad Company (Southern Lines). The Yazoo and Mississippi Valley Railroad Company. Third Revised Page 171–B). Cancels Second Revised Page 171–B. Tariff No. 2–B, I. C. C. No. 6700.

Terminal allowances to the Pan-American Petroleum Corporation at Destrehan, La. Cancel.[3] Allowance discontinued.

Issued July 19, 1935. Effective August 22, 1935. Issued in compliance with order of the Interstate Commerce Commission in Ex Parte No. 104, Sixteenth supplemental report, of June 25, 1935.

Issued by R. A. Trovillion, General Freight Agent, 135 East Eleventh Place, Chicago, Ill. (File Ex Parte 104.) (Part 2.) (Terminal Services.)

815-CCC *Exhibit being tariff of Morgan's Louisiana & Texas Railroad Company, I. C. C. No. 4642–B*

Filed August 19, 1935

INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedule hereto attached is a true copy of Morgan's Louisiana and Texas Railroad and Steamship Company Local Terminal Charges Tariff No. 253, I. C. C. No. 4642–B, said schedule having been filed with the said Interstate Commerce Commission on November 26, 1926.

The pencil additions appearing on the copy hereto attached are expressly excluded from this certification, as none of said additions appear on said schedule so filed.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 15th day of August A. D. 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff. I. C. C. No. 4642–B (Reduction).

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY

LOCAL TERMINAL CHARGES TARIFF NO. 253

Allowance for Switching at Marrero, La.

Morgan's Louisiana and Texas Railroad and Steamship Company will make an allowance of One Dollar per car to the Celotex Company for service performed in switching carload shipments of freight between loading and unloading tracks of the Celotex Company and track connections with the Morgan's Louisiana and Texas Railroad and Steamship Company at Marrero, Louisiana. This allowance in-

[3] Increase.

cludes the movement and placement of a loaded car for unloading and the return of the empty car, or the movement and placement of an empty car for loading and return of same loaded.

Issued November 20, 1926. Effective Interstate December 23, 1926, Intrastate November 20, 1926.

Authority No. A–14601. Issued by Joseph Lallande, G. F. A.; W. H. Stakelum, A. G. F. A.; C. H. Owen, A. G. F. A.; Chas. S. Fay, T. M.; Morgan's Louisiana and Texas Railroad and Steamship Company, New Orleans, La.

815–DDD *Exhibit being Tariff of Texas & New Orleans Railroad Company I. C. C. No. 4642–B, Supplement No. 2*

Filed August 19, 1935

Supplement No. 2 to I. C. C. No. 4642–B

(Cancels I. C. C. No. 4642–B) (M. L. & T. R. R. & S. S. Co. Series)

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

SUPPLEMENT NO. 2 TO LOCAL TERMINAL CHARGES TARIFF NO. 253

(Cancels Local Terminal Charges Tariff No. 253)

CANCELLATION NOTICE [1]

Local Terminal Charges Tariff No. 253, I. C. C. No. 4642–B (M. L. & T. R. R. & S. S. Co. Series) is hereby cancelled. No rule in effect. Issued in compliance with twenty-third supplemental report and order, dated July 11, 1935, of the Interstate Commerce Commission in Ex Parte No. 104. Issued: July 27, 1935. Effective September 3, 1935.

Authority No. A–17095 (R/C 12510) issued by: Joseph Lallande, General Freight Agent, 610 Poydras Street, New Orleans, La. W. W. Hale, General Freight Traffic Manager, Houston, Texas. W. H. Stakelum, Assistant General Freight Agent, New Orleans, La. S. G. Reed, Freight Traffic Manager, Houston, Texas. C. H. Owen, Assistant General Freight Agent, New Orleans, La.

[1] Denotes advance.

815 [illegible] *Exhibit being Tariff of Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans I. C. C. No. 10 and Supplement No. 11 thereto*

Filed August 19, 1935

INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans Freight Tariff No. 34–F, I. C. C. No. 10; said schedule having been filed on May 1, 1931.

Supplement No. 11 to said I. C. C. No. 10, filed August 1, 1935.

Supplement No. 2 to Texas and New Orleans Railroad Company Local Terminal Charges Tariff No. 253, I. C. C. No. 4642–B; said schedule having been filed on July 27, 1935.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 15th day of August A. D., 1935.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

I. C. C. No. 10 Cancels I. C. C. No. 7.

TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS

FREIGHT TRAFFIC DEPARTMENT. FREIGHT TARIFF NO. 34–F (CANCELS FREIGHT NO. 34–E).

Local, proportional, export, import, and coastwise freight tariff containing class and commodity rates also rates, rules, and regulations governing switching, handling, and other charges applicable at all stations on Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.

Governed, except as otherwise provided herein, by Western Classification No. 61 (T. P.-M. P. T. R. R. Tariff No. 44–F), Agent R. C. Eyfe's I. C. C. No. 19, supplements thereto or successive issues thereof. Issued April 30, 1931. Effective June 10, 1931. Louisiana State rates shown herein are published and filed in accordance with General Order No. 2, Louisiana Public Service Commission.

Issued by E. J. Lampert, Superintendent, T. P.-M. P. T. R. R. of New Orleans, Annunciation and Terpsichore Streets, New Orleans, La. C. W. Brosius, Joint General Freight Agent, T. P.-M. P. T. R. R. of New Orleans, New Orleans, La. Norton England, Joint General Freight Agent, T. P.-M. P. T. R. R. of New Orleans, New Orleans, La.

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Rates, carload, from or to New Orleans, La	190, 195, 200, 205, 245 to 295 inc.
Gouldsboro, La	190, 195, 210.
Gretna, La	190, 195, 210, 220, 255, 295.
Harvey, La	190, 195, 210, 220, 225, 255, 270, 275, 295.
Marrero, La	200, 210 to 230 inc., 275, 295.
Distillery Spurs, La	205 to 235 inc., 250, 265, 290.
Westwego, La	205 to 240 inc., 260, 280, 290. 295.
Gillican-Chipley Spur, La	205 to 235 inc., 265, 285, 290.
Rates, rules, and regulations, application of, on business of proprietary lines	10.
Rates, applicable to switches, industries and warehouses not specified	85.
Rates, applicable to industries, switches, and warehouses after change of ownership or name	85.
Rates, carload, intra-terminal	190 to 290 inc.
Reconsigned shipments, charge for	60.
Rules for constructing combination rates	15.
Shipments billed "shipper's order" or to parties not track located	55.
Storage and demurrage, rates, rules, and regulations	20.
Switching empty equipment	25.
Switching, explanation of the service	25, 30.
Taxes ordered collected by governmental authority	80.
Team and delivery tracks, use of, restrictions	45.
Transfer of less carload freight	155, 160, 165.
Unloading charges on domestic fruits and vegetables	305.
Vegetables, unloading charge on	305.
Weighing or re-weighing carload freight	100.

CANCELLATION NOTICE

List of industries formerly shown in Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans Freight Tariff No. 34–E, I. C. C. No. 7 and not brought forward herein, are cancelled, account ceased operation.[1]

Index of commodities

Commodity	Item No.	Commodity	Item No.
Alcohol	250	Petroleum products	275, 280
Cement	290	Rosin	285
Gravel	290	Sand	290
Lard substitutes	255	Shells	290
Lime	290	Shingles	260, 295
Lumber	260, 295	Shrimp, canned	270
Molasses	270	Soups, canned	270
Molasses, black strap	265	Stone, crushed	290
Petroleum oil	275, 280	Turpentine	285

[1] Indicates advance.

Explanation of technical abbreviations

Co	Company.
Ill. Cent	Illinois Central.
I. C. C	Interstate Commerce Commission.
Inc	Incorporated.
Ltd	Limited.
La	Louisiana.
L. & A	Louisiana & Arkansas.
L. P. S. C	Louisiana Public Service Commission.
La. Sou	Louisiana Southern.
L. & N	Louisville and Nashville.
Mo. Pac	Missouri Pacific.
N. O. & L. C	New Orleans and Lower Coast.
N. O. & N. E	New Orleans and Northeastern.
N. O. G. N	New Orleans Great Northern.
N. O. P. B	New Orleans Public Belt.
N. O. T. C	New Orleans Terminal Company.
N. O. T. & M	New Orleans, Texas & Mexico.
No	Number.
R. R	Railroad.
Ry	Railway.
T. & N. O	Texas & New Orleans.
T. & P	The Texas and Pacific.
T. P.-M. P. T. R. R. of N. O.	Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.
Y. & M. V	The Yazoo and Mississippi Valley.

APPLICATION OF RATES, RULES, AND REGULATIONS

Item No. 10. Rules and Regulations

The Missouri Pacific Railroad Company and The Texas and Pacific Railway Company, their successors or assigns, owning the right to use the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans tracks and facilities, all traffic to and from stations shown in Item No. 125, via these lines, or to and from stations shown in Item No. 125, via these lines, or to and from industries and warehouses located on Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans tracks, moving from and to points beyond the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans stations, via these lines, will be treated as their traffic and handled under the tariffs published by those companies, where the Missouri Pacific Railroad Company and (or) The Texas and Pacific Railway Company receive a line haul to or from stations west of Mile Post 9.

Item No. 15. Rules for Constructing Combination Rates

Rates on Lumber and Shingles, carloads, as shown in Item No. 295, or reissues, are subject to the rules for constructing combination rates as provided in Agent B. T. Jones' Freight Tariff No. 228, I. C. C. No. U. S. 1 (T. P.-M. P. T. R. R. of N. O. Tariff No. 36), supplements thereto or successive issues thereof.

Item No. 17. Application of Export and Import Rates

Export and Import rates, when so designated, whether class or commodity, take precedence over other rates between the same points, via the same route, on export or import traffic, as the case may be.

Item No. 18. Application of Export and Import Rates

Rates published in Tariff, or as amended, on traffic exported or imported, as the case may be, apply from or to Insular Possessions of the United States (see Note 1), including Panama Canal Zone; all foreign countries, other than Canada, Newfoundland, and Nova Scotia.

NOTE 1.—Insular Possessions of the United States refers to Philippine Islands, Porto Rico, Guam, Tutuila (American Samoa), Virgin Islands, and Hawaiian Islands.

Item No. 20. Demurrage and Storage

All cars switched from and to industries, switches, tracks, warehouses, and wharves served by this carrier will be subject to the established demurrage and storage rules and charges and rules for handling Cotton and Cotton Linters on Interstate Traffic as published in Agent W. P. Emerson's Freight Tariff No. 4–J, I. C. C. No. 158 (T. P.-M. P. T. R. R. of N. O. Tariff No. 33–Z), supplements thereto or successive issues thereof.

Item No. 25. Switching Empty Equipment

When privately owned cars are switched from one point to another in Intra-Plant, Intra-Terminal, or Inter-Terminal movement, not related to a prior or subsequent loaded car haul, such as movement to or from repair tracks or repair shops, charges for such movement shall be $3.15 per car, for one-way trip when the service in Intra-Plant, and $6.30 per car, for one-way trip, when the service is Intra-Terminal or Inter-Terminal.

For definition of terms "Intra-Plant, Intra-Terminal, and Inter-Terminal," see Item No. 30, or reissues.

Item No. 30. Definition of Switching

The service of switching shall include (unless otherwise provided) the movement of a car loaded in one direction and empty in the opposite direction. When a car is loaded when being switched in both directions, a switching charge shall be made for each movement. The terms "Switching in connection with road haul," "Intra-Plant Switching," "Intra-Terminal Switching," and "Inter-Terminal Switching," are defined as follows:

"Switching in connection with a road haul."—A switching movement from or to industries or connecting lines, or between connecting lines of shipments, on which the originating, intermediate, or destination line has received a road haul.

"Intra-Plant Switching."—A switching movement from one track to another within the same plant or industry, or from one point on a track to another point on the same track within the confines of the same plant or industry.

"Intra-Terminal Switching."—A switching movement (other than Intra-Plant Switching) from one track or industry to another of the same road within the switching limits of the same station or industrial switching district.

"Inter-Terminal Switching."—A switching movement from a track of one road to a track of another road, when both tracks are within the same station or switching limits of the same station or industrial switching district.

Item No. 35. Definition of Competitive Traffic

The term "Competitive Traffic" used herein covers all less carload shipments moving from points on the T. P.-M. P. T. R. R. of N. O., except shipments from points reached only by the rails of the T. P.-M. P. T. R. R. of N. O.

Item No. 40. Allowance for Switching at Marrero, La.

(a) The Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans will pay to the Celotex Company an allowance of 100 cents per car as compensation for service performed in switching carload shipments of freight between loading and unloading tracks of the Celotex Company and track connection with the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans at Marrero, La.

(b) The allowance provided in paragraph (a) includes the movement and placement of a loaded car for unloading and the return of the empty car or the movement and placement of any empty car for loading and returning it loaded.

(c) Such compensation will be in lieu of, and relieve the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans of performing such service as provided by law and (or) in tariffs lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission requiring the placement for loading or unloading and the handling between the tracks of the Celotex Company and the connection with the tracks of the Texas Pacific-Missouri Pacific Terminal Railroad at New Orleans.

Item No. 45. Restrictions Governing Use of Delivery and Team Tracks

The Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans will not switch cars from or to other lines, from or to its bulk or team tracks, or from or to its freight warehouses, to be loaded or unloaded.

Item No. 55. Shipments Billed "Shipper's Order" or to Parties Not Track Located

Shipments from connecting lines billed "Shipper's Order," or with charges following, or billed care of a private switch and consigned to other than the firms located on such switches, will not be received or handled in switching service.

Item No. 60. Reconsigned Shipments in Switch Movement

On cars placed for loading or unloading and subsequently ordered to some other point on this carrier's rails, or to connecting lines (for loading or unloading), the regular switching charge will be assessed to cover the additional switching, except that where the car has been partially loaded or unloaded, and is ordered to some other point on

this carrier's rails, or to connecting line (for final loading or unloading), this carrier will make an extra charge of $3.60 per car, as per Item No. 95, or reissues, in addition to the regular switching charge above referred to.

Item No. 65. Handling Dangerous Explosives at Westwego, La.

This carrier will not handle Dangerous Explosives over its export wharves located in the Parish of Jefferson, La., either for export or import, or coastwise movement.

Item No. 70. Dangerous Explosives From Connecting Line

Dangerous Explosives, carloads or less, will not be received from connecting lines for delivery to industries on this line.

Item No. 75. Explosives, Inflammable, and Other Dangerous Articles

Rates on explosives, inflammable, and other dangerous articles are applicable in connection and in compliance with the regulations fixed by the Interstate Commerce Commission as specified in B. W. Dunn's I. C. C. No. 2, supplements thereto or successive issues thereof.

Item No. 80. Taxes Levied by Governmental Authority

This carrier hereby gives notice that taxes levied or that may be levied by any governmental authority, the collection of which is to be made by it, as required by law, are exclusive of the rates published herein.

Item No. 85. Change of Ownership or Name of Industries

Where industries, switches, or warehouses change ownership or name, the charge for switching will be the same as published herein to or from the old location until the new name of the industry, switch, or warehouse is published.

Item No. 90. Mileage on Private Car Equipment

No mileage will be allowed by this carrier on private car equipment handled in switching movement.

Item No. 95. Charge for Furnishing Equipment for Terminal Switching

(a) Unless otherwise specifically provided, where carrier furnishes an empty car to be loaded, an extra switching charge of $3.60 per car will be made. This charge will not be made on shipments on which a carrier receives freight revenue other than the switching charge.

(b) The extra switching charge specified in paragraph (a) will not be assessed by this carrier where shippers or consignees whose goods are being handled furnish their own cars, without expense to the carrier.

(c) When a car is furnished by this carrier for a loaded switch movement to an industry located on its rails to be used for return load by that industry, to points on or via the lines mentioned in Item No. 10, extra charge of $3.60 will not apply on initial switch movement.

Item No. 100. Weighing and Reweighing Carload Freight

Applicable on interstate traffic only, and must not be used on intrastate traffic.

When a loaded car is weighed or reweighed at the request of consignor or consignee, the charge for such service shall be $2.25 for railroad company's scales and $1.35 for private scales, which charges shall include the weighing of the empty car.

For rules and regulations covering weighing and reweighing of intrastate carload traffic, see T. & P. Ry. Tariff Rate Ruling No. 134–C (T. P.-M. P. T. R. R. of N. O. Tariff No. 60), I. C. C. No. 2304; supplements thereto or successive issues thereof.

Item No. 105. Overloaded Cars

This carrier will not accept from shippers, or connecting lines, for transportation over its rails, cars that are loaded in excess of 10 per cent above the marked capacity, as indicated by the Official Railway Equipment Register, I. C. C. No.–R. E. R. 224, or successive issues thereof, issued by G. P. Conard, Agent.

Where such cars are loaded at industrial tracks, or by shippers at public delivery team track, such cars, after being weighed and found overloaded, will be returned to industry or shipper, for release of excess load, and extra switching charge of $3.15 per car applied to cover the extra switching service, shippers being responsible for any extra car detention occasioned by the overloading under demurrage rules, as published in Tariff named in Item No. 20. If transfer is made by this carrier, a charge of $6.30 per car will be assessed to cover cost of transfer and other services incident thereto.

Item No. 107. Capacity and Dimensions of Cars

For capacity and dimensions of cars, see the Official Railway Equipment Register, G. P. Conard's I. C. C. R. E. R. No. 224, or successive issues thereof.

Item No. 110. Charge for Cleaning and Disinfecting Cars Loaded With Live Stock

When because of Federal, State, County, or Municipal regulations it is necessary that cars that have been used for the transportation

of diseased or exposed cattle or other live stock from or through a quarantined area, be thoroughly cleaned and disinfected upon arrival at destination, this carrier will make the following charge for cleaning and disinfecting such cars, which will be in addition to the rate charged for moving the car: Single Deck, $2.50 per car; Double Deck, $4.00 per car.

Item No. 115. Circuses and Carnival Companies

Circuses and carnival companies will be handled by special contract only.

Item No. 120. Minimum Charge on Less than Carload Shipments

The minimum charge on less than carload shipments shall be as provided in Western Classification No. 61, I. C. C. No. 19, supplements thereto or successive issues thereof, issued by R. C. Fyfe, Agent.

Item No. 125. List of Stations

Alphabetical	Geographical	Distance in miles from New Orleans, La. See (Note A below)
Cudahy Refining Co. Spur‡*, La.	New Orleans, La.	0
Distillery Spur No. 1‡*, La.	Gouldsboro*, La.	1.64
Distillery Spur No. 2‡*, La.	Gretna, La.	2.98
Gillican-Chipley Spur*, La.	La. Cypress Lumber Co.‡*, La.	4.03
Gouldsboro‡*, La.	Harvey, La.	4.42
Gretna, La.	Marrero*, La.	5.35
Harvey, La.	Gillican-Chipley Spur*, La.	7.38
La. Cypress Lumber Co.‡*, La.	Distillery Spur No. 1‡*, La.	7.78
Marrero*, La.	Distillery Spur No. 2‡*, La.	8.12
New Orleans, La.	Westwego*, La.	8.46
Union Petroleum Co. Spur‡*, La.	Westwego Elevators (Elevator B)‡*, La.	8.96
Westwego*, La.	Westwego Wharves‡*, La.	9.10
Westwego Elevators‡*, La.	Cudahy Refining Co. Spur‡*, La.	9.36
Westwego Wharves‡*, La.	Union Petroleum Co. Spur‡*, La.	9.48

*No Agent. Freight charges must be prepaid.
‡Carload freight only can be handled.

NOTE A.—Where these distances are used in making rates in the State of Louisiana based on mileage, twenty miles should be added to the distance shown herein to or from New Orleans, La., account Mississippi River Transfer.

Fractions of miles will be used in arriving at total mileage, but where such mileage ends in a fraction less than five-tenths (0.5), such fraction shall be dropped; where fraction is five-tenths (0.5), or over, it shall count as one mile.

Item No. 130. List of Industries and Warehouses Located on the Rails of this Company Within the Port Limits of New Orleans, La.

Name	Business	Location
Acme Warehouse (National Biscuit Co.)	Public warehouse	New Orleans.
American Molasses Co.[1]	Molasses	Gretna.
Appalachian Warehouses, Division of the Douglas Public Service Corporation, Inc.	Storage warehouse	New Orleans.
Asbestos Wood and Shingle Company	Asbestos shingles and asbestos wood	Gretna.
Babcock, Phillip W	Petroleum products	Westwego.
Celotex Company	Building materials	Marrero.
Chickasaw Cooperage Co	Cooperage	Gretna.
Chickasaw Wood Products Company	Cooperage and petroleum products	Gretna.
Consumers Biscuit Company	Cakes and crackers	New Orleans.
Continental Can Co.[1]	Cans	Harvey.
Coyle & Co., W. G., Inc.	Coal	Gouldsboro.
Davison-Pick Fertilizer Service, Inc.	Fertilizer	Gretna.
Douglas Public Service Corporation, Inc., The.	Oil and molasses storage terminal	Marrero.
Gretna Grocery & Grain Co.[1]	Feed and groceries	Gretna.
Gulf Refining Company	Petroleum products	Gretna.
Gulf States Terminal & Transportation Co.	Storage	Westwego.
Gulf & Valley Cotton Oil Company	Cotton seed products	Gretna.
Louisiana Cotton Press	Cotton	New Orleans.
Louisiana Terminal Co.[1]	Bulk commodity handling plant	Westwego.
Mayronne Lumber & Supply Company	Lumber and building material	Marrero.
Mente and Company	Bags and bagging	New Orleans.
National Biscuit Company	Sugar and molasses	New Orleans.
North American Trading and Import Company.[1]	Molasses	Marrero.
Olympic Public Warehouses	Storage warehouse	New Orleans.
Penick & Ford, Ltd	Molasses and canned goods	Harvey.
Pitre Lumber Co., M. M	Lumber	Marrero.
Rathborne, Joseph, Lumber Co	Lumber	Harvey.
Rossville Commercial Alcohol Corp.[1]	Alcohol	Harvey.
Rossville Commercial Alcohol Corp.[1]	Alcohol	Marrero.
Rossville Commercial Alcohol Corporation	Alcohol	Westwego.
Seaboard Refining Company	Cotton seed products	Gretna.
Servicised Products Corp.[1]	Building material	Marrero.
Sinclair Refining Company	Petroleum products	Westwego.
Southern Cotton Oil Company	Cotton seed products	Gretna.
Swift and Company	Cotton seed products	Harvey.
Taylor-Seidenbach, Inc	Shingles and roofing material	New Orleans.
Texas Co.[2]	Petroleum Products	Marrero.
Union Compress Company	Cotton	New Orleans.
Union Stave Company	Staves	Gretna.
United States Industrial Alcohol Co.[1]	Alcohol	Westwego.
Westwego Compress Co	Cotton compress and warehouse	Westwego Wharves.
Westwego Ice Co	Ice	Westwego.
Westwego Lumber Company	Lumber	Westwego.

[1] Indicates reduction. [2] Indicates advance.

Item No. 135. Interchange With Connecting Lines, Direct Track Connections at New Orleans, La., With Illinois Central Railroad Company, Louisville and Nashville Railroad Company, New Orleans Public Belt Railroad, The Yazoo and Mississippi Valley Railroad Company

Item No. 140. At Gouldsboro, La., With New Orleans and Lower Coast Railroad Company

Item No. 145. At Gretna, La., With Texas & New Orleans Railroad Company

Indirect Track Connections

Item No. 150. At New Orleans, La.: Louisiana & Arkansas Railroad Company, Louisiana Southern Railway Company, Texas &

New Orleans Railroad Company, New Orleans and Northeastern Railroad Company, New Orleans Terminal Company, New Orleans Great Northern Railroad Company.

Transfer of Less Carload Freight at T. P.-M. P. T. R. R. of N. O. Stations

The T. P.-M. P. T. R. R. of N. O. will absorb the transfer charges shown in Items Nos. 155, 160, and 165 on less carload shipments (competitive traffic, see Item No. 35), destined to points beyond New Orleans, La., to which no through rates are published, when rates of carriers from New Orleans, La., do not include such service; except that this carrier will not make any absorption that will reduce its revenue below its minimum charge of 31 cents.

Item No.	From T. P.-M. P. T. R. R. of N. O. depots or yards at—	To depots or yards of connecting lines named	Transfer charges			Connections
			Less carload	Minimum charge	When delivered in cars	
155	Gouldsboro, La.	N. O. & L. C.	See item No. 165		No charge	Track connection.
160	Gretna, La.	T. & N. O.	See item No. 165		No charge	Track connection.
		Ill. Cent	Household goods and furniture, not boxed; heavy machinery, when pieces exceed 500 pounds in weight; iron safes, baskets, and vehicles (except farm wagons, knocked down), 8½ cents per 100 pounds; cotton ties 1 cent per bundle. All other merchandise, including farm wagons, knocked down, 3½ cents per 100 pounds.		No charge	Track connection.
		Y. & M. V.			No charge	Track connection.
		L. & N.			No charge	Track connection.
		N. D. P. B.			No charge	Track connection.
		N. O. T. & M.			No charge	Track connection.
		N. O. & L. C.			See item No. 155.	
165	New Orleans, La.	N. O. G. N.		31 cents	$2.25 per car	Through N. O. P. B. R. R.
		T. & N. O.				
		L. & A.				
		La. Sou.			$2.25 per car	Through L. & N. R. R.
		Southern Ry. System (N. O. & N. E. R. R.).			$2.25 per car	Through N. O. P. B. R. R. or L. & N. R. R.

Less carload shipments received from connecting lines must be delivered to the depots of the T. P.-M. P. T. R. R. of N. O., but cost of such delivery will not be absorbed by this carrier.

Item No. 170.[1] Rate section No. 1.—Class rates

[Rates in cents per 100 pounds]

Between New Orleans, La., and—	Classes									
	1	2	3	4	5	A	B	C	D	E
Gouldsboro, La.	42	36	29	23	17	19	14	13	9	7
Gretna, La.	42	36	29	23	17	19	14	13	9	7
Harvey, La.	42	36	29	23	17	19	14	13	9	7
Marrero, La.	44	37	31	24	18	20	14	13	10	8
Westwego, La.	44	37	31	24	18	20	14	13	10	8
Westwego wharves, La.	44	37	31	24	18	20	14	13	10	8

Class Rates.—If the charge accruing under section No. 2 of this Tariff is lower than the charge accruing under this section on the same shipment via the same route, the charge accruing under section No. 2 will apply.

Item No. 175.[1] Class rates between Gouldsboro, Gretna, Harvey, Marrero, Westwego, Westwego Elevators and Westwego Wharves, La.

[Rates in cents per 100 pounds]

Distance (miles)	Classes									
	1	2	3	4	5	A	B	C	D	E
5 miles and under	36	31	25	20	14	16	12	11	8	6
10 miles and over 5	38	32	27	21	16	17	12	11	9	7

Item No. 180. Class rates

Applicable only in the construction of through rates from or to points beyond the confines of the State of Louisiana, except will apply on Export and outbound Coastwise traffic originating at points in Louisiana and on Import and inbound Coastwise traffic destined points in Louisiana. (For rates on Intrastate traffic, see Items Nos. 170 and 175, or reissues.)

[Rates in cents per 100 pounds]

Between New Orleans, La., and—	Classes									
	1	2	3	4	5	A	B	C	D	E
Gouldsboro, La. Gretna, La. Louisiana Cypress Lumber Co., La. Harvey, La. Marrero, La. Gillican-Chipley spur, La. Distillery spur No. 1, La. Distillery spur No. 2, La. Westwego, La. Westwego elevators, La. Cudahy Refining Co. spur, La. Union Petroleum Co. spur, La.	41½	34½	28½	24	18½	18½	14½	13½	11½	10½

Item No. 185. Class rates

Applicable only in the construction of through rates from or to points beyond the confines of the State of Louisiana, except will apply on Export and outbound Coastwise traffic originating at points in Louisiana and on Import and inbound Coastwise traffic destined points in Louisiana. (For rates on Intrastate traffic, see Items Nos. 170 and 175, or reissues.)

[Rates in cents per 100 pounds]

Between Gretna, La., and—	Classes									
	1	2	3	4	5	A	B	C	D	E
Gouldsboro, La. Louisiana Cypress Lumber Co., La. Harvey, La. Marrero, La. Gillican-Chipley spur, La. Westwego, La. Westwego elevators, La. Cudahy Refining Co. spur, La. Union Petroleum Co. spur.	41½	34½	28½	24	18½	18½	14½	13½	11½	10½

[1] Applies on Intrastate traffic only.

SECTION NO. 2

Commodity rates.—If the charge accruing under Section No. 1 of this tariff is lower than the charge accruing under this section on the same shipment via the same route, the charge accruing under Section No. 1 will apply.

Commodity Rates—Rate Section No. 2

Rates named in this section apply on carload freight only, and include delivery to or receipt from interchange tracks, with direct connections.

Rates do not include loading or unloading charges to or from cars and vessels.

For loading and unloading charges, see schedules of rates in Items Nos. 300, 305, and 310.

The extra switching charge shown in Item No. 95 will be in addition to charges shown below (except as otherwise specified).

Column 1.—Rates shown in Column 1 apply on shipments on which originating, intermediate, or destination line has received a road haul (see Item No. 30).

Interstate rates also apply on shipments received from or delivered to Federal Barge Line.

Column 2.—Rates shown in Column 2 below apply on shipments handled in Intra-Plant switch movement (see Item No. 30).

Column 3.—Rates shown in Column 3 below apply on shipments handled in Intra-Terminal or Inter-Terminal switch movement (see Item No. 30).

44090—38——31

Rates in dollars and cents per car, except as otherwise provided

Item No.	Commodities	Between—	And—	Rates		
				Column 1	Column 2	Column 3
190	(Applicable on Interstate traffic only and must not be used on Intrastate traffic). All freight (except as shown in Item No. 195.)	Gouldsboro, La. Gretna, La. Harvey, La.	New Orleans, La.	1½ cents per 100 pounds; minimum $7.20 per car, maximum $9.00 per car.		2 cents per 100 pounds; minimum $9.00 per car, maximum $11.50 per car.
195	(Applicable on Intrastate traffic only, and must not be used on Interstate traffic.) All freight (except as shown in Items Nos. 255, 270, and 275).	Gouldsboro, La. Gretna, La. Harvey, La.	New Orleans, La.	$6.30		$8.10.
200	All freight (except as shown in Items Nos. 275 and 295).	Marrero, La.	New Orleans, La.	$6.30 (Note 5); $10.00 (Note 6).		$8.10 (Note 5). $12.00 (Note 6).
205	All freight (except as shown in Items Nos. 250, 260, 265, 280, 285, and 290), minimum weight 40,000 pounds.	Distillery spur No. 1, La. Distillery spur No. 2, La. Gillican-Chipley spur, La. Westwego (Note 1), La.	New Orleans, La.	4½ cents per 100 pounds.		5½ cents per 100 pounds.
210	All freight	Gouldsboro, La.	Gouldsboro, La.		$3.15	$6.30 (Note 2).
			Gretna, La.	$2.25		$3.15 (Note 3). $6.30 (Note 4).
			Harvey, La.	$3.60		$6.30 (Note 4). $4.95 (Note 3).
			Marrero, La.	$6.30		$8.10.
			Distillery spur No. 1, La.	$7.20		$9.00.
			Distillery spur No. 2, La.	$7.20		$9.00.
			Gillican-Chipley spur, La.	$7.20		$9.00.
			Westwego (Note 1), La.	$10.00		$12.00.
220	All freight	Gretna, La.	Gretna, La.	$2.25	$3.15	$3.15 (Note 3). $6.30 (Note 4).
			Harvey, La.	$3.60		$4.95 (Note 3). $6.30 (Note 4).
			Marrero, La.	$3.60		$4.95 (Note 3). $6.30 (Note 4).
			Distillery spur No. 1, La.	$6.30		$8.10.
			Distillery spur No. 2, La.	$6.30		$8.10.
			Gillican-Chipley spur, La.	$6.30		$3.10.
			Westwego (Note 1), La.	$8.55		$11.00.

For Application of Rates and Explanation of Column Numbers Shown Below, See Pages 10 and 11 Herein

[Rates in dollars and cents per car, except as otherwise provided]

Item No.	Commodities	Between	And	Rates		
				Column 1	Column 2	Column 3
225	All freight	Harvey, La	Harvey, La	$2.25	$3.15	3.15 (Note 3). 6.30 (Note 4).
			Marrero, La	3.60		4.95 (Note 3). 6.30 (Note 4).
			Distillery spur No. 1, La	6.30		8.10.
			Distillery spur, No. 2, La	6.30		8.10.
			Gillican-Chipley spur, La	6.30		8.10.
			Westwego (Note 1), La	8.55		$11.00.
230	All freight	Marrero, La	Marrero, La	$2.25	$3.15	$3.15 (Note 3). 6.30 (Note 4).
			Distillery spur No. 1, La	4.95		6.30.
			Distillery spur No. 2, La	4.95		6.30.
			Gillican-Chipley spur, La	4.95		6.30.
			Westwego (Note 1), La	6.30		8.10.
235	All freight	Distillery spur No. 1, La	Distillery spur No. 1, La		$3.15	6.30 (Note 2).
		Distillery spur No. 2, La	Distillery spur No. 2, La		3.15	6.30 (Note 2).
		Gillican-Chipley spur, La	Gillican-Chipley spur, La		3.15	6.30 (Note 2).
			Westwego (Note 1), La	$2.25		6.30.
240	All freight	Westwego, La	Westwego elevators, La	$2.25	$3.15	$6.30.
			Westwego wharves, La	2.25	3.15	6.30.
			Westwego, La	2.25	3.15	6.30.
245	All freight	New Orleans, La. (Applies from all points within New Orleans (proper) terminal of the T. P.-M. P. T. R. R. of N. O.).	New Orleans, La. (Applies to all points within New Orleans (proper) terminal of the T. P.-M. P. T. R. R. of N. O.).	$2.25	$3.15	$3.15 (Note 3). 6.30 (Note 4).

For Application of Rates and Explanation of Column Numbers Shown Below, See Pages 10 and 11 Herein—Continued

Item No.	Commodities	From	To	Column 1	Column 2	Column 3
250	(Applicable on Interstate traffic only, and must not be used on Intrastate traffic.) Alcohol.	Distillery spur, No. 1 La Distillery spur No. 2, La	New Orleans, La	$13.50 (Note 7)		$17.10.[1]
255	(Applicable on Intrastate traffic only, and must not be used on Interstate traffic). Lard Substitutes, when for handling and distribution from this carrier's New Orleans, La., terminal by shipper. (See Item No. 190 for charge applicable on Interstate traffic.)	Gretna, La Harvey, La	New Orleans, La	$12.00		$15.50.
260	(Applicable on Intrastate traffic only, and must not be used on Interstate traffic.) Lumber and Shingles.	Westwego, La	New Orleans, La	$10.00		$12.00.
265	(Applicable on Intrastate traffic only, and must not be used on Interstate traffic. Molasses, Blackstrap, in tank cars to be furnished by shippers; cars to be loaded and unloaded by shipper.	Distillery spur No. 1, La Distillery spur No. 2, La Gillican-Chipley spur, La	New Orleans, La	$12.00		$15.50.
270	(Applicable on Intrastate traffic only, and must not be used on Interstate traffic.) Molasess, Canned Soups, and Canned Shrimp, straight or mixed, when for handling and distribution from this carrier's New Orleans, La., terminal, by shipper. (See Item No. 190 for charge applicable on Interstate traffic.)	Harvey, La	New Orleans, La	$12.00		$15.50.
275	(Applicable on Intrastate traffic only, and must not be used on Interstate traffic.) Petroleum Oil and its Products	Harvey, La Marrero, La (Rates apply between points shown.)	New Orleans, La	$6.30		$8.10.
280	Petroleum Oil and its Products, viz.: Crude Oil; Fuel Oil; Gas Oil; Gasoline, Casinghead; Gasoline; Kerosene; Lubricating Oil; Refined Oil, illuminating or burning; in glass or earthenware, packed in barrels or boxes, in metal cans partially or completely jacketed, in metal cans in boxes, in bulk in barrels, carload minimum weight 26,000 pounds, subject to Rule 34 of Western Classification No. 61, Agent R. C. Fyfe's I. C. C. No. 19, supplements thereto or successive issues thereof, in tank cars, carloads, estimated weight per gallon 6.6 pounds, except that on Crude, Fuel or Gas Oil, estimated weight per gallon 7.4 pounds, will govern	Westwego, La	New Orleans, La	$13.50 [2]		

	subject to "Rule 35 or Western Classification No. 61, Agent R. C. Fyfe's I. C. C. No. 19, supplements thereto or successive issues thereof.					
285	(Applicable on Interstate traffic only, and must not be used on Intrastate traffic.) Turpentine and Rosin.	Gillican-Chipley spur, La...	New Orleans, La.....	$13.50 (Note 7).....	.....	$17.10.[1]
290	(Applicable on Intrastate traffic only, and must not be used on Interstate traffic.) Cement, Gravel, Lime, Crushed Stone, Sand, and Shells.	New Orleans, La.....	Distillery spur No. 1, La.... Distillery spur No. 2, La.... Gillican-Chipley spur, La... Westwego (Note 1), La.....	$12.00.....	.....	$16.00.

[1] Per car of not exceeding 45,000 pounds, excess weight to be assessed on basis of 2 cents per hundred pounds, observing maximum rate of $18.30 per car.
[2] Applies as a proportional rate only, and only on shipments destined to points in the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia.

EXPLANATION OF NOTES REFERRED TO ON PAGES 11, 12, AND 13

NOTE 1.—Where reference is made to this Note, rates will not apply to or from Westwego Elevators and Wharves.

NOTE 2.—Where reference is made to this Note, rates apply only on traffic handled between industries located at stations shown.

NOTE. 3—Where reference is made to this Note, rates are applicable only on shipments moving in "Inter-Terminal" switching. On such shipments, a minimum charge of $6.30 per car is applicable to the through movement.

NOTE 4.—Where reference is made to this Note, rates are applicable only on shipments moving in "Intra-Terminal" switching movement.

NOTE 5.—Applicable on Intrastate traffic only, and must not be used on Interstate traffic.

NOTE 6.—Applicable on Interstate traffic only, and must not be used on Intrastate traffic.

NOTE 7.—Rate is expressed in dollars per car of not exceeding 53,350 pounds; excess to be assessed on basis of 1½ cents per 100 pounds, observing maximum charge of $15.50 per car on entire shipment.

Proportional Rates on Interstate Traffic Destined Beyond New Orleans, La.

Applicable only in the construction of through rates from or to points beyond the confines of the State of Louisiana, except will apply on export and outbound coastwise traffic originating at points in Louisiana and on import and inbound coastwise traffic destined points in Louisiana.

[Rates in cents per 100 pounds]

Item No.	Commodities (Carload)	From—	To—	Rate
295	Lumber and Shingles, minimum weight 34,000 pounds	Gretna, La. Harvey, La. Marrero, La. Westwego, La.	New Orleans, La.	6½ 6½ 9 9

Item No. 300. Loading Charges at New Orleans, La.

Charges shown below will be assessed for loading the following commodities at depots and warehouses of the T. P.–M. P. T. R. R. of N. O. in New Orleans, La., when cars are to be handled in switch movement.

Commodities	Charges in cents per 100 pounds
Grain and grain products, in bags, barrels, or boxes	1¼
Hay, in bales	2
Molasses, in barrels, half barrels, kegs or in cans or glass, packed in boxes, crates, or barrels	1¼
Peas, cow, in bags, barrels or boxes	2¼
Sugar, packed, in barrels or in bags	1

On mixed carloads, the charge applicable on the heaviest weighted article contained in the car will apply.

Item No. 305. Unloading Charges on Domestic Fruits and Vegetables

On domestic fruits and vegetables, originating either at or beyond New Orleans, La., delivered the T. P.–M. P. T. R. R. of N. O. by connecting or switching railroads and switched to produce sheds of the T. P.–M. P. T. R. R. of N. O., the following charges will be assessed to cover the cost of unloading, when the unloading is performed by the T. P.–M. P. T. R. R. of N. O. labor:

Commodities	Charges in cents per 100 pounds
Fruits, green, dried or evaporated, in bags, boxes, barrels, or crates	1¼
Vegetables, viz.:	
Beans and peas, dried; in bags, barrels or boxes	1¼
Onions; in barrels, crates, or bags	1¼
Potatoes, in sacks, barrels, or crates	1¼
Domestic fruits and vegetables not otherwise specified in this item, except bulk freight (see note)	2

On mixed carloads, the charge applicable on the heaviest weighted article contained in the car will apply.

NOTE.—Freight in bulk will not be handled.

Item No. 310. Handling Charges on Import, Export, and Coastwise Freight

For handling charges for unloading from cars and delivering to ships or receiving from ships and loading upon cars at Westwego and Westwego Wharves, La., refer to Freight Tariff No. 4–J (T. P.–M. P. T. R. R. of N. O. Tariff No. 33–Z), I. C. C. No. 158, supplements thereto or reissues thereof, issued by W. P. Emerson, Agent.

Item No. 315. Handling Iron and Steel Articles From Barges at Westwego, La.

Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans will unload and transfer from barges to cars at docks of the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans at Westwego, La., carload shipments of iron and steel articles, including pipe, and assess a charge of 35 cents per ton of 2,000 pounds for this service.

This service will be performed only where necessary arrangements have been made by shippers or consignees prior to arrival of shipment at Westwego, La., and only when the Texas and Pacific Railway or Missouri Pacific Railroad Company receives a road haul on the shipment.

APPLICATION OF TARIFF OF EMERGENCY CHARGES

Except as otherwise provided herein, charges resulting from the rates in this Supplement are subject to Tariff of Emergency Charges, as provided in Supplement No. 10 (or successive issues thereof). Supplement No. 11 to I. C. C. No. 10, cancels Supplement No. 9. Supplements Nos. 10 and 11 contain all changes from the original Tariff that are effective on the date hereof.

TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS, FREIGHT TRAFFIC DEPARTMENT

Supplement No. 11 cancels Supplement No. 9. Supplements Nos. 10 and 11 contain all changes from the original Tariff that are effective on the date hereof to Freight Tariff. T. P.-M. P. T. No. 34–F. Mo. Pac. Inf. No. 125–F. Local, proportional, export, import, and coastwise freight tariff containing class and commodity rates, also rates, rules, and regulations governing switching, handling, and other charges applicable at all stations on Texas Pacific-Missouri Pacific Terminal Railroads of New Orleans.

Governed, except as otherwise provided herein, by Western Classification No. 64, Agent R. C. Fyfe's I. C. C. No. 22 (T. P.-M. P. T. R. R. Tariff No. 44–I), supplements thereto or successive issues

thereof. Issued July 31, 1935. Effective September 3, 1935. (Except as otherwise provided herein.)

Louisiana Intrastate rates shown herein are published and filed in accordance with General Order No. 2 of the Louisiana Public Service Commission. Issued by E. S. Pennebaker, Manager, T. P.-M. P. T. R. R. of New Orleans, Annunciation and Terpsichore Streets, New Orleans, La. L. W. Loughlin, Assistant General Freight Agent, Texas and Pacific Ry. Company, New Orleans, Louisiana. A. W. Aylin, Assistant General Freight Agent, Missouri Pacific Lines, New Orleans, Louisiana.

Exceptions to Ratings in Current Western Classification

Item No.	Articles—Carloads, except as otherwise indicated	Rating
	Effective September 3, 1935 (Expires with December 31, 1935, unless sooner canceled, changed or extended)	
[1] 5	Acid, picric (high explosive), dry High explosives, not otherwise indexed by name Low explosives, not otherwise indexed by name, or black powder Powder, smokeless, for cannon Powder, smokeless, for small arms Nitro-cellulose, dry Nitro-starch, dry Trinitrotoluol, dry Less than carloads. (File 5293)	First class.
[1] 8	Manufactured tobacco, smoking, in bales, barrels or boxes, or in pails two or more strapped together; less than carload rating will also apply on cut or granulated tobacco, other than fine cut chewing, which may be used for chewing as well as smoking. Cigarettes, tobacco, with paper wrappers, in packages conforming to the requirements of the current western classification, in connection with the first class rating on less than carloads provided in said classification; less than carloads. NOTE A.—Applicable only as proportional rates on Interstate traffic having origin or destination beyond the State of Louisiana. NOTE B.—Applicable only in connection with class rates provided in Item No. 170-A.	Second class (see note).

Item No. 25–B, Cancels No. 25–A.[2] Rules and Regulations

Switching Empty Equipment

Canceled, other provisions of Tariff will apply: Effective September 3, 1935.

Item No. 40–A, Cancels No. 40.[3] Allowance for Switching at Marrero, La.

Canceled.[4] Allowance discontinued. (File 10104–2.)

Item No. 95–A, Cancels No. 95.[5] Charge for Furnishing Equipment for Terminal Switching

(a) Unless otherwise specifically provided, where carrier furnishes an empty car to be loaded, an extra switching charge of $3.60 per car will be made. This charge will not be made on shipments on which a carrier receives freight revenue other than the switching charge. (See Exception.)

(b) The extra switching charge specified in paragraph (a) will not be assessed by this carrier where shippers or consignees whose

goods are being handled furnish their own cars, without expense to the carrier.

(e) When a car is furnished by this carrier for a loaded switch movement to an industry located on its rails to be used for return load by that industry, to points on or via the lines mentioned in Item No. 10, extra charge of $3.60 will not apply on initial switch movement.

Exception.—The provisions of this Item will not apply on Interstate traffic, including export, import, and coastwise traffic moving under Column 3 rates published in Items Nos. 190 and 200-A, or reissues.

Effective September 3, 1935, except as noted.

Item No. 130-C, Cancels No. 130-B. List of Industries and Warehouses Located on the Rails of This Company Within the Port Limits of New Orleans, La.

Name	Business	Location
Acme Warehouse (National Biscuit Co.)	Public warehouse	New Orleans.
American Molasses Co	Molasses	Gretna.
Appalachian Warehouses, division of the Douglas Public Service Corporation, Inc.	Storage warehouse [1]	New Orleans.
Babcock, Phillip W		
Celotex Company	Building materials	Marrero.
Chickasaw Cooperage Co	Cooperage	Gretna.
Chickasaw Wood Products Company	Cooperage and petroleum products.	Gretna.
Commercial Solvent Corporation [6] (Formerly Rossville Commercial Alcohol Corp.)	Alcohol	Harvey and Westwego.
Consumers Biscuit Company	Cakes and crackers	New Orleans.
Continental Can Co	Cans	Harvey.
Coyle & Co., W. G., Inc	Coal	Gouldsboro.
Davison-Pick Fertilizer Service, Inc	Fertilizer	Gretna.
Douglas Public Service Corporation, Inc., The	Oil and molasses storage terminal	Marrero.
Gretna Grocery & Grain Co	Feed and groceries	Gretna.
Gulf Refining Company	Petroleum products	Gretna.
Gulf States Terminal & Transportation Co	Storage	Westwego.
Gulf & Valley Cotton Oil Company	Cotton seed products	Gretna.
Johns-Manville Products Corp. (formerly Asbestos Wood and Shingle Co.).	Asbestos shingles and asphalt roofing.	Gretna.
Louisiana Cotton Press		
Louisiana Terminal Co	Bulk commodity handling plant	Westwego.
Mayronne Lumber & Supply Company	Lumber and building material	Marrero.
Mente and Company	Bags and bagging	New Orleans.
National Biscuit Company	Sugar and molasses	New Orleans.
North American Trading and Import Company	Molasses	Westwego.
Olympic Public Warehouses	Storage warehouse	New Orleans.
Penick & Ford, Ltd	Molasses and canned goods	Harvey.
Pine Lumber Co., M. M.	Eliminated. [6]	
Publicker Commercial Alcohol Corp	Alcohol	Westwego.
Rathbone, Joseph, Lumber Co	Lumber	Harvey.
Rossville Commercial Alcohol Corp	Eliminated. [3]	
Seaboard Refining Company	Cotton seed products	Gretna.
Servicised Products Corp	Building material	Marrero.
Sinclair Refining Company	Petroleum products	Westwego.
Southern Cotton Oil Company	Cotton seed products	Gretna.
Swift and Company	Cotton seed products	Harvey.
Taylor-Seidenbach, Inc.	Shingles and roofing material	New Orleans.
Texas Co	Petroleum products	Marrero.
Union Compress Company	Cotton	New Orleans.
Union Stave Company	Staves	Harvey.
United States Industrial Alcohol Co	Alcohol	Westwego.
Westwego Compress Co	Cotton compress and warehouse	Westwego Wharves.
Westwego Ice Co	Ice	Westwego.
Westwego Lumber Company	Lumber	Westwego.

[1] Indicates reduction.
[2] Reissued from Supplement No. 8, effective April 10, 1934.
[3] Issued in compliance Interstate Commerce Commission's order in twenty-third supplemental report in Ex Parte No. 104, of July 11, 1935.
[4] Indicates advance.
[5] Reissued from Supplement No. 9, effective August 4, 1934.
[6] Indicates change other than advance or reduction.
[7] Reissued from Supplement No. 4, effective July 5, 1932.

Transfer of less carload freight at T. P.-M. P. T. R. R. of N. O. stations [4]

The T. P.-M. P. T. R. R. of N. O. will absorb the transfer charges shown in Items Nos. 155, 160, and 165 on less carload shipments (competitive traffic, see Item No. 35), destined to points beyond New Orleans, La., to which no through rates are published, when rates of carriers from New Orleans, La., do not include such service; except that this carrier will not make any absorption that will reduce its revenue below its minimum charge of 31 cents.

Less Carload shipments received from connecting lines must be delivered to the depots of the T. P.-M. P. T. R. R. of N. O., but cost of such delivery will not be absorbed by this carrier.

Item No.	From T. P.-M. P. T. R. R. of N. O. depots or yards at—	To depots or yards of collecting lines named	Transfer charges			Connections
			Less carload	Minimum charge	When delivered in cars	
155-A cancels 155 [4]	Gouldsboro, La	N. O. & L. C	See Item No. 165		No charge	Track connection.
160-A cancels 160 [4]	Gretna, La	T. & N. O	See Item No. 165		No charge	Track connection.
165-A cancels 165 [4]	New Orleans, La	Ill. Cent	Household goods and furniture, not boxed, heavy machinery, when pieces exceed 500 pounds in weight; iron safes, baskets and vehicles (except farm wagons, knocked down), 8½ cents per 100 pounds, cotton ties 1 cent per bundle. All other merchandise, including farm wagons, knocked down, 3½ cents per 100 pounds.	31 cents	No charge	Track connection.
		Y. & M. V			No charge	Track connection.
		L. & N			No charge	Track connection.
		N. O. P. B			No charge	Track connection.
		N. O. T. & M			No charge	Track connection.
		N. O. & L. C			See Item No. 155-A	
		N. O. G. N			$2.25 per car	Through N. O. P. B. R.R.
		T. & N. O			$2.25 per car	Through L. & N. R. R.
		L. & A			$2.25 per car	Through N. O. P. B. R. R. or L. & N. R. R.
		La. Sou				
		Southern Ry. System (N. O. & N. E. R. R.).				

RATE SECTION NO. 1

(See page 7 of Tariff for Application.)

Item No. 170-A, Cancels No. 170.[5] Class Rates.

[Rates in cents per 100 pounds]

Between New Orleans, La. and—	Classes									
	1	2	3	4	5	A	B	C	D	E
Gouldsboro, La	42	36	29	23	17	19	14	13	9	7
Gretna, La	42	36	29	23	17	19	14	13	9	7
Harvey, La	42	36	29	23	17	19	14	13	9	7
Marrero, La	44	37	31	24	18	20	14	13	10	8
Westwego, La	44	37	31	24	18	20	14	13	10	8
Westwego Wharves, La	44	37	31	24	18	20	14	13	10	8

[3] Indicates advance.
[4] Reissued from Supplement No. 1, effective September 5, 1931.
[5] Reissued from Supplement No. 5, effective August 24, 1932.
[6] Reissued from Supplement No. 4, effective July 5, 1932.

Item No. 175–A, Cancels No. 175.[1] Class Rates Between Gouldsboro, Gretna, Harvey, Marrero, Westwego, Westwego Elevators and Westwego Wharves, La.

[Rates in cents per 100 pounds]

Distance miles	Classes									
	1	2	3	4	5	A	B	C	D	E
5 miles and under	36	31	25	20	14	16	12	11	8	6
10 miles and over 5	38	32	27	21	15	17	12	11	9	7

Item No. 180–A, Cancels No. 180.[1] Cancelled. For rates to apply, see Items Nos. 170–A and 175–A.

Item No. 185–A, Cancels No. 185.[1] Cancelled. For rates to apply, see Items Nos. 170–A and 175–A.

Reissued from Supplement No. 1, effective September 5, 1931. Refer to pages 11 and 12 of Tariff, and cancel heading shown thereon and subsitute the following in lieu thereof:

Rate Section No. 2—For Application of Rates and Explanation of Column Numbers Shown Below

[Rates in dollars and cents per car, except as otherwise provided]

Item No.	Commodities	From (Except as noted)	To (Except as noted)	Rates		
		Between	And	Column 1	Column 2	Column 3
200-A cancels 200 [1]	All freight (except as shown in Items Nos. 275 and 295).	Marrero, La.	New Orleans, La.	$6.30 (Note 5) $10.00 (Note 6)		$8.10 (Note 5). $12.00 (Note 6). 2 cents per 100 pounds, minimum $9.00 and maximum $11.50 per car [3]
205-A cancels 205 [2]	Effective September 3, 1935. Cancelled, under provisions of Tariff will apply. [4]	Distillery Spur No. 1, La.	New Orleans, La.	z$13.50		$17.10.[7]
250-A cancels 250 [3]	(Applicable on Interstate Traffic only, and must not be used on Intrastate Traffic) Alcohol.	Distillery Spur No. 2, La.		$13.50 $ (Note 7) $13.50 [6]		
253 [5]	Blackstrap Molasses and Alcohol	Westwego, La.	New Orleans, La.			$16.00.[8]
257-A cancels 257 [4]	Reissued from Supplement No. 7, effective September 20, 1933. Expires with July 31, 1934, unless sooner cancelled, changed or extended, after which date other provisions of this Tariff apply. Cotton.	Westwego, La. Westwego Wharves, La.	Interchange connection with the Public Belt R. R. in New Orleans, La.			

[1] Reissued from Supplement No. 5, effective August 21, 1932.
[2] Reissued from Supplement No. 4, effective July 5, 1932.
[3] Applies only on Coastwise, Import, and Export traffic.
[4] Indicates reduction.
[5] Reissued from Supplement No. 3, effective February 22, 1932.
[6] Applies as proportional rate only, and only on shipments destined to points in the following states: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia.
[7] Per car of not exceeding 45,000 pounds, excess weight to be assessed on basis of 2 cents per hundred pounds, observing maximum rate of $18.30 per car.
[8] Applies only on Export and Coastwise traffic, moving over city front wharves, New Orleans, La. This rate includes extra switching charge of $3.60 per car assessed where equipment is furnished by the T. P.-M. P. T. R. R. of New Orleans.

NOTE 5.—Applicable on Intrastate traffic only, and must not be used on Interstate traffic.

NOTE 6.—Applicable on Interstate traffic only, and must not be used on Intrastate traffic.

NOTE 7.—Rate is expressed in dollars per car of not exceeding 53,350 pounds; excess to be assessed on basis of 1½ cents per 100 pounds, observing maximum charge of $15.50 per car on entire shipment.

Supplement No. 2 to I. C. C. No. 4642–B

(Cancels I. C. C. No. 4642–B). (M. L. & T. R. R. S. S. Co. Series)

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

SUPPLEMENT NO. 2 TO LOCAL TERMINAL CHARGES TARIFF NO. 253

(Cancels Local Terminal Charges Tariff No. 253)

CANCELLATION NOTICE [4]

Local Terminal Charges Tariff No. 253, I. C. C. No. 4642–B (M. L. & T. R. R. & S. S. Co. Series) is hereby cancelled. No rule in effect. Issued in compliance with twenty-third supplemental report and order, dated July 11, 1935, of the Interstate Commerce Commission in Ex Parte No. 104. Issued July 27, 1935. Effective September 3, 1935.

Authority No. A–17095. (B/C 12510) issued by Joseph Lallande, General Freight Agent, 610 Poydras Street, New Orleans, La. W. W. Hale, General Freight Traffic Manager, Houston, Texas. W. H. Stakelum, Assistant General Freight Agent, New Orleans, La. S. G. Reed, Freight Traffic Manager, Houston, Texas. C. H. Owen, Assistant General Freight Agent, New Orleans, La.

815–FFF *Exhibit being letter of September 25, 1926, to Secretary of Interstate Commerce Commission from Morgans Louisiana & Texas Railroad Company and Celotex Company*

Filed August 19, 1935

INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Letter dated New Orleans, Louisiana, September 25, 1926, addressed to Mr. G. B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., signed Morgan's Louisiana and Texas Railroad and Steamship Company, by R. C. Watkins, Vice President and General Manager, and The Celotex Company, by C. F. Dahlberg, First Vice President, and of enclosures referred to therein,

Copy of letter dated Washington, September 28, 1926, addressed to Mr. R. C. Watkins, Vice President and General Manager, Morgan's La. & Tex. R. R. & S. S. Co., New Orleans, La., signed G. B. McGinty, Secretary,

Letter dated New Orleans, October 8, 1926, addressed to Mr. G. B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., signed R. C. Watkins, and

[4] Denotes advance.

Copy of Letter dated Washington, October 13, 1926, addressed to Mr. R. C. Watkins, Vice-President and General Manager, Morgan Louisiana & Texas Railroad and Steamship Company, New Orleans, La., signed G. B. McGinty, Secretary,

the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 15th day of August A. D. 1935.

GEORGE B. MCGINTY.
Secretary of the Interstate Commerce Commission.

Morgan's Louisiana and Texas Railroad and Steamship Company, Louisiana Western Railroad Company, Iberia and Vermilion Railroad Company

NEW ORLEANS, LA., *Sept. 25, 1926.*

Mr. G. B. MCGINTY, *Secretary,*
Interstate Commerce Commission,
Washington, D. C.

DEAR SIR:—Near the town of Marrero, in Jefferson Parish, Louisiana, The Celotex Company has an extensive manufacturing plant where bagasse, or the fibre from sugar cane, is manufactured into insulating lumber known as "Celotex." This manufacturing plant is located adjacent to main line of Morgan's Louisiana and Texas Railroad and Steamship Company over which the railroad company operates freight trains. Switch tracks have been constructed from connection with said main line into premises of The Celotex Company, which said tracks are located within New Orleans yard limits and all switching service for said manufacturing plant has heretofore been performed by switch engines of the railroad company operating within said yard limits.

To accommodate its rapidly increasing business, The Celotex Company has undertaken a substantial increase in capacity of its plant; additional units practically doubling its capacity are nearing completion and will be put in operation with this Fall's busy season, beginning on or about October 1st.

With this increased capacity and the substantial increase in trackage provided by The Celotex Company within its premises, the switching service for said manufacturing plant must be increased and it is estimated that the average daily switch engine service of four hours heretofore performed by the railroad company must be increased to eight hours and that during the busy season from October 1st to April 1, a switch engine will be required in continuous service.

It is understood that a substantial portion of the switching hereafter required by said manufacturing company will be for the sole convenience and benefit of said company and in no sense properly designated as "carrier service." It is admitted, however, that the carrier's obligation to place cars for loading and unloading will continue.

For convenience of both parties and in order to avoid delays and congestion in switching should both parties undertake operation of switch engines within the premises of said manufacturing company, certain contracts have been tentatively entered into by and between said parties, subject to the Commission's approval, providing:

First, for the construction of additional trackage necessary to handling the contemplated increased traffic at said plant, together with the use of certain trackage of the railroad company by said manufacturing plant in its operations.

Second, performance by the manufacturing company of all switching within its premises. Copy of contract providing for said switching service, dated Sept. 25, 1926, with accompanying copy of contract providing for use by said manufacturing company of railroad company's tracks, is attached hereto.

This said contract provides that the manufacturing company will perform that switching commonly and properly designated as "carrier service" and as compensation therefor receive from the Railroad Company the sum of one dollar per loaded car received by and forwarded from The Celotex Company's manufacturing plant via the railroad company's line, but, before making such contract effective, we wish to be advised by the Commission whether the same would be objectionable or in any way illegal.

We entertain no doubt of the legality of the proposed arrangement, or of its equity, and understand that in other cases, particularly represented by United States Cast Iron Pipe & Foundry Company vs. Director General, 59 I. C. C., 59, and Pittsburgh Forge & Iron Company vs. Director General, 59 I. C. C., 29, such contracts have been approved by the Commission, but we join in an informal way to secure an expression in this case, with advice as to whether provision for proposed allowance should be published in a tariff and filed with the Commission.

Respectfully submitted,

MORGAN'S LOUISIANA AND TEXAS
RAILROAD AND STEAMSHIP COMPANY,
By R. C. WATKINS,
Vice Pres. & Gen. Mgr.

THE CELOTEX COMPANY,
By C. F. DAHLBERG,
1st V. P.

This agreement between Morgan's Louisiana and Texas Railroad and Steamship Company, hereunto duly authorized and hereinafter styled "Morgan Company," and The Celotex Company, hereunto duly authorized and hereinafter styled "Celotex Company," witnesseth, that whereas, the parties hereto entered into a contract dated September 25th, 1926, providing for the construction, maintenance, and operation of certain railroad trackage for use in serving the manufacturing plant of Celotex Company, located ata Celotex, in Jefferson Parish, Louisiana, and further providing for use by Celotex Company of cer-

tain tracks or portions of tracks previously constructed and now maintained by Morgan Company, all as provided in said contract a copy of which is hereto attached and marked "Exhibit A" for identification; and

Whereas, the manufacturing plant of Celotex Company is located adjacent to and served by tracks of Morgan Company, connecting with tracks owned by and within premises of Celotex Company, commonly known as plant facilities;

It is agreed between the said parties as follows:

I

In consideration of Celotex Company performing switching service which must otherwise be performed by Morgan Company, commonly referred to as "carrier service," this including the handling and placing for unloading of all loaded cars received for account of Celotex Company and handling outbound all loaded cars and empties, Morgan Company agrees to pay to Celotex Company the sum of One Dollar ($1.00) per loaded car received by and/or forwarded from Celotex Company's manufacturing plant via Morgan Company's line.

Payment by Morgan Company to Celotex Company shall be made monthly in accordance with statement compiled by Morgan Company and approved by Celotex Company reporting the loaded cars inbound and outbound via Morgan Company's line for preceding month.

II

In serving said manufacturing plant of Celotex Company, Morgan Company will deliver, on the 6,250 ft. track to be constructed by Morgan Company as described in Article I of Exhibit A, all loaded or empty cars, same to be handled therefrom by Celotex Company as its service and convenience may require. Cars, either loaded or empty, returned by Celotex Company to Morgan Company for handling outbound, will be delivered upon the same track.

All cars, loaded or empty, placed by Morgan Company upon said track, shall be considered as delivered to and in possession of Celotex Company from time of such placing by Morgan Company until their return to said track by Celotex Company empty or, if under outbound load, until return to said track by Celotex Company and signing of bill of lading therefor.

III

Celotex Company agrees to promptly remove from the track hereinabove described all cars, loaded or empty, delivered thereon for account of Celotex Company. Upon failure of Celotex Company to remove said cars with promptness, thereby requiring Morgan Company to hold on other tracks, owned by Morgan Company, cars

consigned to Celotex Company, such cars so held by Morgan Company, shall, upon notice to Celotex Company, be considered as delivered for purposes of accounting.

IV

This agreement shall continue in effect for so long a period as the second party shall operate its manufacturing plant at Celotex.

In testimony whereof, the parties hereto have executed this agreement in sextuple on this 25 day of September 1926.

MORGAN'S LOUISIANA AND TEXAS
RAILROAD AND STEAMSHIP COMPANY,
R. C. WATKINS,
Vice Pres. & Gen. Mgr.
THE CELOTEX COMPANY,
By C. F. DOHLBERG,
Vice P.

Approved as to form.
DENEGRE, LEROY & CHAFFE,
General Attorney for Morgan Company.

The STATE OF LOUISIANA,
Parish of Orleans:

This agreement, made and entered into by and between the Morgan's Louisiana and Texas Railroad and Steamship Company, hereinafter styled "First Party," and The Celotex Company, hereinafter styled "Second Party."

Witnesseth: That whereas, in order that additional service for its plant at Celotex, Louisiana, may be provided, the Second Party has requested the First Party to construct certain tracks in the vicinity of said plant, and to grant it the use of portions of said tracks when constructed, and

Whereas, First Party is willing to construct the new tracks hereinafter defined and to grant the Second Party the use of portions of the same in common with itself upon the acceptance of certain terms and obligations by the Second Party.

Now, therefore, it is agreed between the parties hereto as follows:

Article I

The First Party agrees and binds itself to furnish the rails and all material and labor for and to construct at its own expense the following described tracks as shown by red lines on the attached map. Drawing 26023.

1. A track 6,252 feet in length on the south side of its main track as shown by solid red line, between the letters "A" and "B" on said attached map.

2. A connection from track "A"–"B" extending from a point near the letter "B" southeasterly to Second Party's track at the letter "E."

3. A crossover track 196 feet long between the letters "F" and "G."

4. That part of the crossover track, between the letters "H" and "I" which is located on First Party's property being a length of 221 feet.

Article II

(a) All of said tracks, when constructed, shall be owned by First Party. Second party agrees to reimburse First Party for the cost of the 221 feet of the crossover "H"–"I," which cost is estimated to be Sixteen Hundred Seven and no/100 ($1,607.00) Dollars, and also for the cost of making certain necessary changes in First Party's block signal system which cost is estimated to be Five Thousand Four Hundred Sixty three & 33/100 ($5,463.33) Dollars.

(b) Cost as herein used is understood to include materials at current stock prices plus freight and handling charges. Also actual labor charges plus customary allowances thereon to cover accounting and use of tools.

Article III

(a) When said track shall have been constructed, First Party grants to Second Party the right of use, in common with itself and any other party to whom similar privileges may be granted, 2,000 feet of track "A"–"B" being that part of said track lying 2,000 feet east of the point designated by the letter "D"; the crossover track "F" "G"; that portion of first party's main line track between the letters "G"–"H" and 221 feet of the crossover "H"–"I" for performing switching service necessary in operating its manufacturing plant.

(b) In consideration for such privilege, the Second Party agrees to pay to First Party at the office of its Treasurer in the City of New Orleans, Louisiana, as a yearly rental a sum equal to two (2%) percent of the value of the 2,000 feet of track "A"–"B," said value for the purpose of this contract is understood to be Ten Thousand Five Hundred Eighty Three & 22/199 ($10,583.22) Dollars, together with the sum of two (2%) percent of the value of crossover track "F"–"G," herein agreed to have a value of Eleven Hundred Eighty Three & 14/100 ($1,183.14) Dollars; and as its proportion of the expense of maintenance of said tracks, understood and accepted as One Hundred and No/100 ($100.00) Dollars per annum.

Article IV

(a) In addition to the trackage to be constructed by First Party as outlined above, First Party agrees and binds itself to furnish the rails and all material and labor for and to shift the present main line turnout as shown by dotted yellow line on said attached map at the point "C" to the position shown by dotted red line at the point "D."

(b) The Second Party will reimburse the First Party for all costs, charges, or expenses incident to the shifting of the above described

trackage and when same has been shifted to the new location it shall be owned by the First Party.

Article V

(a) While the First Party undertakes to maintain its tracks, the joint use of which is herein granted the Second Party, in a reasonably safe and serviceable condition, it is expressly agreed and understood that the First Party shall not be liable for injuries to or death of persons or loss of or damage to property in the employ, custody, or control of the Second Party resulting from or growing out of the condition of said tracks. It being understood that for the purpose of this agreement the Second Party assumes all such risks as fully and absolutely as if the said tracks were its own.

(b) In event any of the Second Party's engines or engines and cars, should, while operating over or or upon the said tracks, be derailed or wrecked, the Second Party assumes all damages therefor and will reimburse the First Party for any expense incurred in repairing the tracks and picking up and removing the equipment of the Second Party or otherwise clearing the track and property of the First Party.

Article VI

As to the operation and movement of trains, engines, engines and cars, over the tracks described in Article III hereof, it is agreed by and between the parties hereto as follows:

(a) That all employes or other persons who may be engaged by Second Party in handling or operating the engines, or engines and cars of the Second Party while upon the tracks of the First Party are the sole and exclusive employes of the Second Party, and the Second Party shall be solely responsible for the acts of said employes while operating its engines, or engines and cars upon the First Party's tracks.

(b) Each party hereto assumes entire responsibility for damages resulting from injury to or death of persons, including employees, or injury to or killing of live stock, damage to tracks of the First Party and property of every character and description which may result from or be caused by its employes, locomotives, or trains.

(c) Where injury to or death of persons, including employees, or injury to or killing of live stock, or damage to property of any character or description is caused by the joint negligence of the employees of both parties, or where responsibility for such injury, death, or damage cannot be definitely fixed or ascertained, then and in such event each party shall assume one-half (½) of the liability for injury to or death of persons, including employees, patrons, and others upon or adjacent to said tracks by its license or invitation and each be liable for one-half (½) of all damages to property in its care, custody, or control.

(d) It is understood and agreed that in event of collisions between the engines, or engines and cars of the Second Party and

those of any other Railroad Company to which similar rights and privileges may be granted by the First Party, or in event of other accidents resulting by reason of such use, the liability for damages resulting from such collisions or other accidents shall be determined and settled between the Second Party and such other Railroad Company or Companies, the First Party shall not as between it and the Second Party be liable for any such collision and other accidents, except when caused by the negligence of the sole employees or agents of the First Party.

(e) The Second Party agrees and obligates itself to indemnify and hold the First Party harmless against all claims, damages, causes of action, suits, or judgments of every kind and character whatsoever, including court costs and attorneys' fees which may be brought or lodged against the First Party where liability therefor is, under the terms of this agreement, assumed by the Second Party. The Second Party shall be given (10) days' written notice of any claim, claims, or suits made or brought against the First Party, and the Second Party at its option shall have the right to settle or defend such claims or suits in the name of the First Party.

(f) The Second Party will comply with all State and Federal Safety Appliance laws relative to equipment operated by it over tracks owned and controlled by the First Party, and the Second Party hereby expressly assumes liability for failure upon its part to comply with any law or governmental regulation, State or Federal, affecting the construction, equipment, maintenance, operation, or inspection of its equipment operated over the tracks of the First Party aforesaid, or the number, qualification, or hours of service of persons employed thereon, and will promptly reimburse and indemnify the First Party for any damages, judgments, fines, penalties, cost, or charges which may be assessed or charged against First Party by reason of any violation or alleged violation of said laws or regulations or any of them, due to any act or omission of Second Party or its employes, and all expenses and attorney's fees incurred in defending any such case which may be brought against First Party on account thereof.

(g) It is agreed that in the event any suit or suits are brought against First Party for any such violation or alleged violation of law or regulations on the part of the Second Party, the Second Party shall be impleaded in and made party defendant to such suit or suits, and that said Second Party will defend same free of any charge, cost, or expense to the First Party.

Article VII

All sums due or to become due by the Second Party under this agreement as annual rental, share of maintenance, expense, etc., shall be paid to the First Party, annually in advance, and at the office of its Treasurer in the City of New Orleans, Louisiana, as aforesaid.

Article VIII

(a) It is understood that the movement of the railroad locomotives involves some risk of fire, and the Second Party assumes all responsibility for, and agrees to indemnify the First Party against loss or damage to property of the Second Party or to property upon its premises, regardless of First Party's negligence, arising from fire caused by locomotives operated by the First Party on said trackage, or in its vicinity for the purpose of serving said Second Party, except to the premises of the First Party and to rolling stock belonging to the First Party or to others, and to shipments in the course of transportation. Nothing in this paragraph shall be understood as releasing the First Party from its obligations to provide locomotives properly equipped for preventing fires.

(b) The Second Party also agrees to indemnify and hold harmless the First Party for loss, damage, or injury, from any act or omission of the Second Party, its employees or agents, to the person or property of any other person or corporation while on or about the trackage other than that covered by Article VI hereof, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

Article IX

It is agreed that the Second Party shall be liable for cars placed or operated upon the above described trackage for the use and benefit or upon the request of the Second Party, whether such cars are owned by the First Party or others, in the event of destruction of, or damage to, said cars by fire not originating from the locomotives of the First Party, the said Second Party shall pay all bills for such destruction or damage upon presentation thereof. Said bills shall be rendered in accordance with the established practice of railroads in settling such matters between themselves.

Article X

(a) The right is given the First Party at any time to make use of said trackage for the purpose of receiving and delivering freight from and to other patrons, to spring other tracks therefrom to shift and to extend the same provided such use or any extension thereof, shall not unreasonably interfere with the Second Party in its use thereof, but in this event the interest and maintenance charges shall be prorated upon basis of cars handled.

(b) It is expressly agreed and understood that this contract and the rights accruing hereunder are not transferable by the Second Party and that the Second Party shall not assign this contract or grant the use of the trackage herein referred to, to any other party or parties without the written consent of the First Party.

Article XI

(a) The First Party shall have the right to disconnect and may refuse to operate over any track referred to herein in event that (a) the Second Party ceases for a continuous period of three years (unless prevented by law, strikes, or vis major) the doing of business in an active and substantial way; (b) the Second Party fails to observe and perform each and every of the covenants and promises it has agreed to observe and perform; (c) the First Party is required by law, ordinance, regulation, or order of any governmental or lawfully constituted public authority having jurisdiction in the premises, to discontinue the operation of the trackage or to elevate, depress, or otherwise change said trackage or other tracks in vicinity thereof in such manner as to render it impracticable in the First Party's judgment to continue to operate the same, but in the event of any such change of tracks or of grade, the Second Party may retain its track connection by paying all cost of adjusting that trackage covered by this agreement to conform thereto provided always such adjustment is in the opinion of the First Party, practicable.

Article XII

This agreement shall continue in effect for so long a period as the Second Party shall operate its manufacturing plant at Celotex.

In testimony whereof, the parties hereto have executed this agreement in sextuple on this the 25 day of September, A. D. 1926.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY.

By R. C. WATKINS,
Vice Pres. & Gen'l Mgr.

THE CELOTEX COMPANY,

By C. F. DAHLBERG,
1st V. P.

Approved as to form:

DENEGRE, LEOVY & CHAFFE,
General Attorneys for First Party.

815-GGG *Letter from Secretary of Interstate Commerce Commission dated September 28th, 1926, in reply to letter from M. L. & T. R. R.*

Filed August 19, 1935

SEPTEMBER 28, 1926.

Mr. R. C. WATKINS, *Vice President and General Manager, Morgan's La. & Tex. R. R. & S. S. Co., New Orleans, La.*

DEAR SIR: Referring to your letter of September 25, asking for approval of an allowance under section 15 of $1 per car to the Celotex Company for switching cars between its plant at Marrero, La., and the junction, please state for the information of the Commis-

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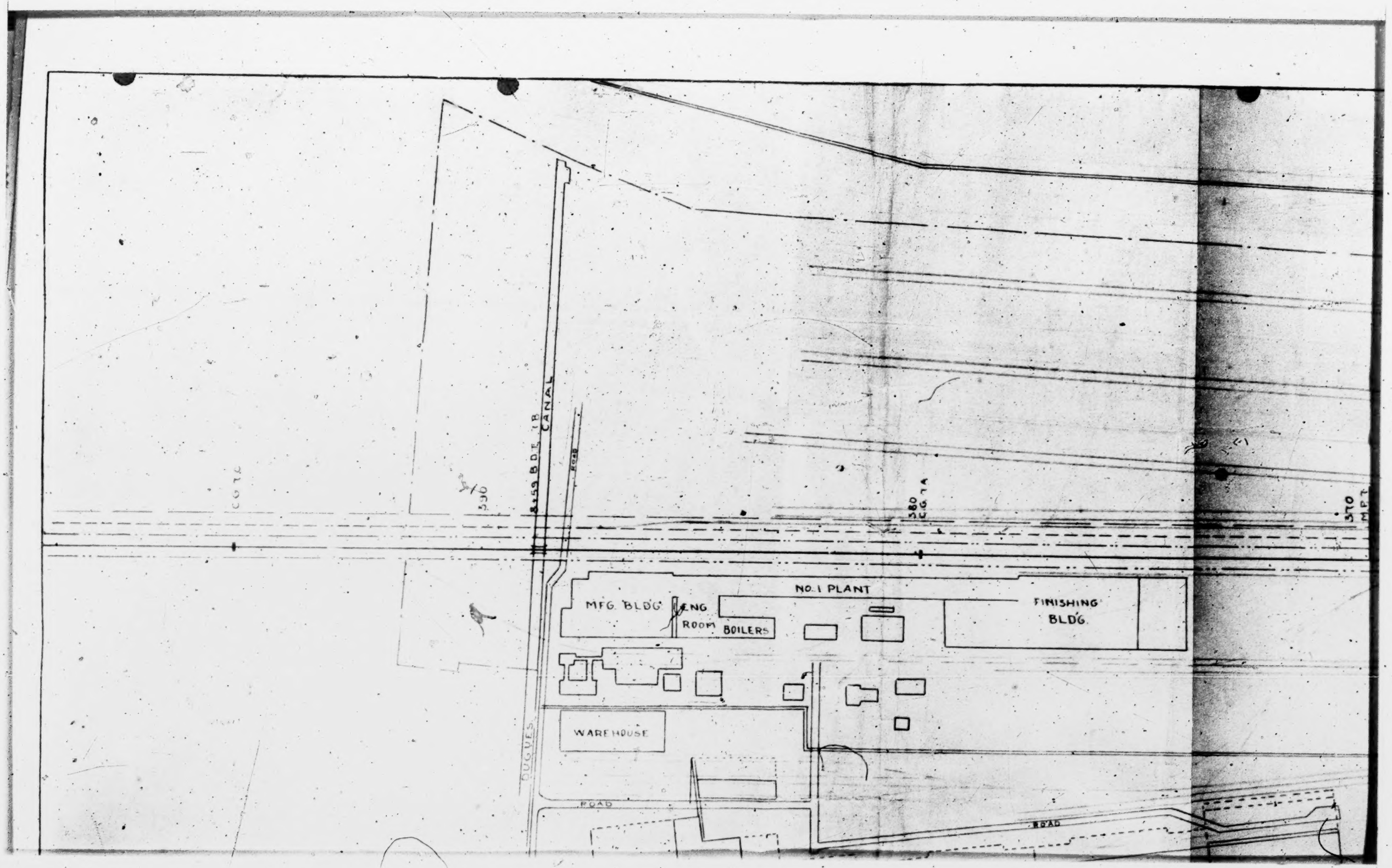
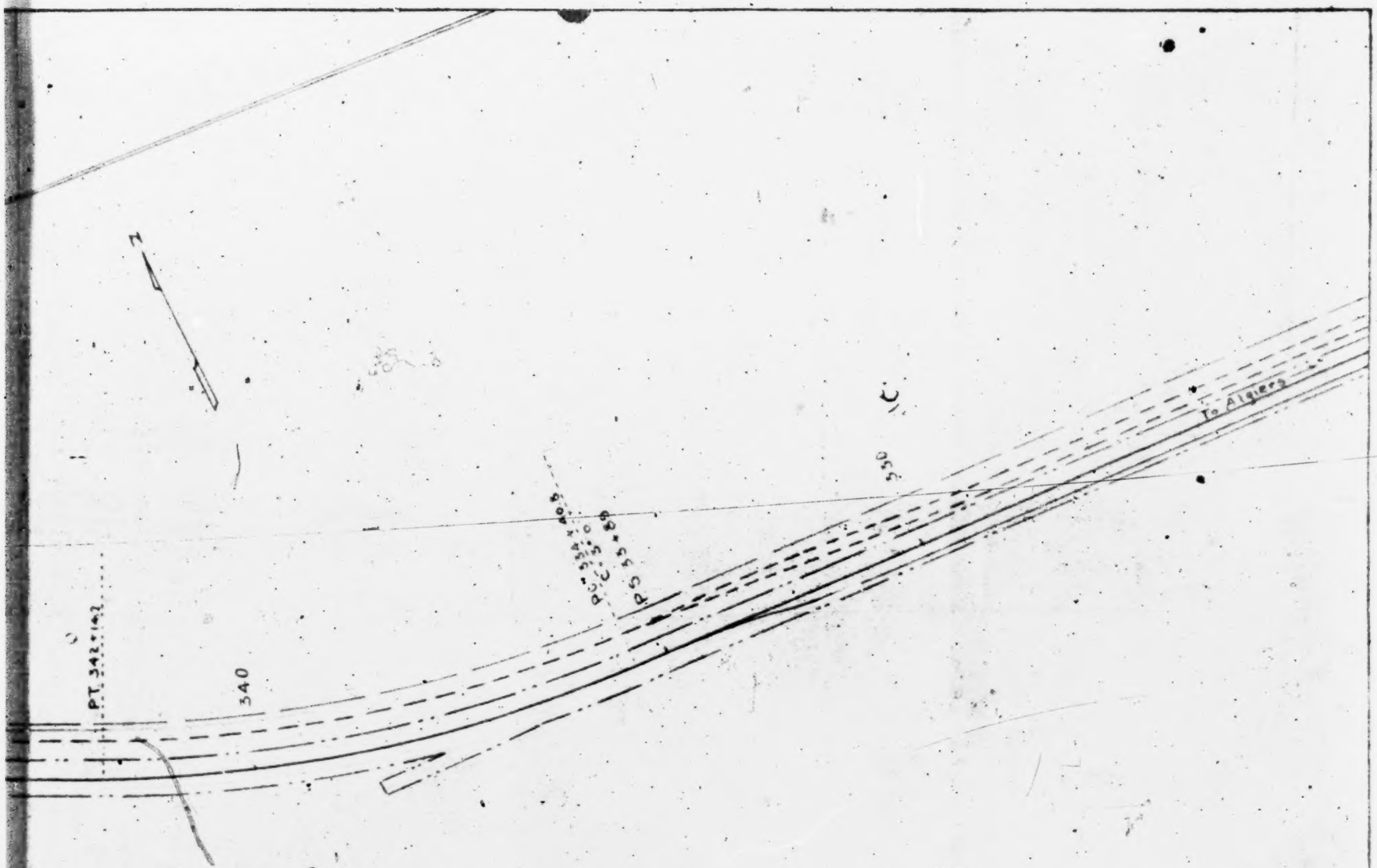

B.D.E. I.B. CANAL
COTE
330
380 E.G.T.A.
370 M.P.T.
NO. 1 PLANT
MFG. BLDG.
ENG ROOM
BOILERS
FINISHING BLDG.
WAREHOUSE
DUQUES
ROAD
ROAD

Top of Levee

370
M.S.T.

350

340

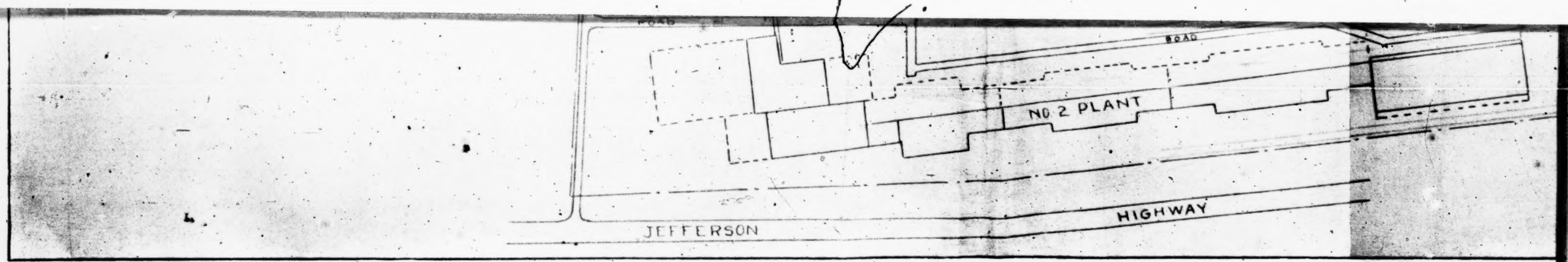


SOUTHERN PACIFIC LINES
M.L.& T. R.R.
PROPOSED TRACKS FOR CELOTEX CO.

SOUTHERN PACIFIC LINES.
M.L.& T. R.R.
PROPOSED TRACKS FOR CELOTEX CO
AT
CELOTEX, LA

Scale 1" - 200 May 27, 1926
Office of Term. Supt New Orleans, La

Drawing 26023


ROAD
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NO 2 PLANT
HIGHWAY
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PAGE

sion the most distant and the nearest point within the plant where cars are to be placed and picked up, and the average distance to be covered by the interchange switching for which it is proposed to pay the industry an allowance of $1 per car.

Upon receipt of this additional information your letter will be referred to the Commission for consideration, and you will be advised of the conclusion reached.

Respectfully,

———— ————, *Secretary.*

815–HHH *Exhibit being letter to Secretary of Interstate Commerce Commission dated October 8, 1926, from M. L. & T. R. R*

Filed August 19, 1935

Morgan's Louisiana and Texas Railroad and Steamship Company, Louisiana Western Railroad Company, Iberia and Vermilion Railroad Company

Marrero—Tracks—Celotex Company—Switching

NEW ORLEANS, *October 8, 1926.*

349.878

Mr. G. B. McGINTY,
Secretary, Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: In compliance with request contained in your letter September 28th, WCS–CWP, above subject:

The most distant point where cars will be placed for the Celotex Company's switch at Marrero is 5,750 feet, the nearest point 4,050 feet, and the average distance 4,900 feet.

Yours truly,

R. C. WATKINS.

815–III *Exhibit being letter dated October 13, 1926, from Secretary of Interstate Commerce Commission in reply to letter from M. L. & T. R. R.*

Filed August 19, 1935

OCTOBER 13, 1926.

Mr. R. C. WATKINS, *Vice-President and General Manager,*
Morgan Louisiana & Texas Railroad and Steamship Company,
New Orleans, La.

DEAR SIR: In further reply to your letter of September 25, having reference to a proposed allowance of $1 per car to the Celotex Company for interchange switching between its plant near Marrero, La., and the junction.

Under section 15 of the interstate commerce act, provision is made for payment to the owner of property transported for any service

he may render, directly or indirectly, connected with the transportation, the charge and allowance therefor to be no more than is just and reasonable.

While section 6 of the act does not in express terms require the publication of allowances made to shippers under section 15, yet the Courts have held that allowances made to a shipper, even though reasonable in amount, are unlawful rebates unless published. Therefore the Commission has required tariff publication of all allowances made to shippers under Sec. 15.

Respectfully,

——— ———, *Secretary.*

815-JJJ *Exhibit being Tariffs of defendant railroad companies effective September 3, 1935, cancelling allowance*

Filed August 19, 1935

Application of Tariff of Emergency Charges

Except as otherwise provided herein, charges resulting from the rates in this Supplement are subject to Tariff of Emergency Charges, as provided in Supplement No. 10 (or successive issues thereof). Supplement No. 11 to I. C. C. No. 10, cancels Supplement No. 9. Supplements Nos. 10 and 11 contain all changes from the original Tariff that are effective on the date hereof.

TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS

FREIGHT TRAFFIC DEPARTMENT

Supplement No. 11 cancels Supplement No. 9. Supplements Nos. 10 and 11 contain all changes from the original Tariff that are effective on the date hereof to Freight Tariff. T. P.-M. P. T. No. 34-F. Mo. Pac. Inf. No. 125-F.

Local, Proportional, Export, Import, and Coastwise Freight Tariff

Containing Class and Commodity Rates; Also Rates, Rules, and Regulations Governing Switching, Handling, and Other Charges Applicable at all stations on Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.

Governed, except as otherwise provided herein, by Western Classification No. 64, Agent R. C. Fyfe's I. C. C. No. 22 (T. P.-M. P. T. R. R. Tariff No. 44-I), supplements thereto or successive issues thereof. Issued July 31, 1935. Effective September 3, 1935. (Except as otherwise provided herein.) Louisiana Intrastate rates shown herein are published and filed in accordance with General Order No. 2 of the Louisiana Public Service Commission. Issued by E. S. Pennebaker, Manager, T. P.-M. P. T. R. R. of New Orleans, Annunciation and Terpsichore Streets, New Orleans, La. L. W. Loughlin,

Assistant General Freight Agent, Texas and Pacific Ry. Company, New Orleans, Louisiana. A. W. Aylin, Assistant General Freight Agent, Missouri Pacific Lines, New Orleans, Louisiana.

Item No. 130–C, Concluded. List of Industries and Warehouses Located on the Rails of This Company Within the Port Limits of New Orleans, La.

Name	Business	Location
Louisiana Terminal Co	Bulk commodity handling plant	Westwego.
Mayronne Lumber & Supply Company	Lumber and building material	Marrero.
Mente and Company	Bags and bagging	New Orleans.
National Biscuit Co	Sugar and molasses	New Orleans.
North American Trading and Import Company	Molasses	Westwego.
Olympic Public Warehouses	Storage warehouse	New Orleans.
Penick & Ford, Ltd	Molasses and canned goods	Harvey.
Pitre Lumber Co., M. M	Eliminated [1]	
Publicker Commercial Alcohol Corp	Alcohol	Westwego.
Rathbone, Joseph, Lumber Co	Lumber	Harvey.
Rossville Commercial Alcohol Corp	Eliminated [2]	
Seaboard Refining Company	Cotton seed products	Gretna.
Servicised Products Corp	Building material	Marrero.
Sinclair Refining Company	Petroleum products	Westwego.
Southern Cotton Oil Company	Cotton seed products	Gretna.
Swift and Company	Cotton seed products	Harvey.
Taylor-Seidenbach, Inc	Shingles and roofing material	New Orleans.
Texas Co	Petroleum products	Marrero.
Union Compress Company	Cotton	New Orleans.
Union Stave Company	Staves	Harvey.
United States Industrial Alcohol Co	Alcohol	Westwego.
Westwego Compress Co	Cotton compress and warehouse	Westwego wharves.
Westwego Ice Co	Ice	Westwego.
Westwego Lumber Company	Lumber	Westwego.

[1] Reissued from Supplement No. 4, effective July 5, 1932.
[2] Indicates advance.

Transfer of Less Carload Freight at T. P.–M. P. T. R. R. of N. O. Stations

The T. P.–M. P. T. R. R. of N. O. will absorb the transfer charges shown in items Nos. 155, 160, and 165 on less carload shipments (competitive traffic, see item No. 35) destined to points beyond New Orleans, La., to which no through rates are published, when rates of carriers from New Orleans, La., do not include such service; except that this carrier will not make any absorption that will reduce its revenue below its minimum charge of 31 cents.

Less carload shipments received from connecting lines must be delivered to the depots of the T. P.–M. P. T. R. R. of N. O., but cost of such delivery will not be absorbed by this carrier.

Item No.	From T. P.-M. P. T. R. R. of N. O. Depots or yards at—	To depots or yards of connecting lines named	Transfer charges			Connections
			Less carload	Minimum charge	When delivered in cars	
155-A cancels 156 [3]	Gouldsboro, La	N. O. & L. C	See Item No. 165		No charge	Track connection.
160-A cancels 160 [3]	Gretna, La	T. & N. O	See Item No. 165		No charge	Track connection.
164-A cancels 165 [3]	New Orleans, La	Ill. Cent	Household goods and furniture, not boxed, heavy machinery, when pieces exceed 500 pounds in weight; iron safes, baskets, and vehicles (except farm wagons, knocked down), 8½ cents per 100 pounds, cotton ties 1 cent per bundle. All other merchandise, including farm wagons, knocked down, 3½ cents per 100 pounds.	31 cents	No charge	Track connection.
		Y. & M. V			No charge	Track connection.
		L. & N			No charge	Track connection.
		N. O. P. B			No charge	Track connection.
		N. O. T. & M			No charge	Track connection.
		N. O. & L. C			See Item No. 155-A	
		N. O. G. N			$2.25 per car	Through N. O. P. B. R. R.
		T. & N. O			$2.25 per car	Through L. & N. R. R.
		L. & A			$2.25 per car	Through N. O. P. B. R. R. or L. & N. R. R.
		La. Sou				
		Southern Ry. System (N. O. & N. E. R. R.).				

Item No. 170–A, Cancels No. 170. Rate Section No. 1. Class Rates [4]

[Rates in cents per 100 pounds]

Between New Orleans, La. and—	Classes									
	1	2	3	4	5	A	B	C	D	E
Gouldsboro, La	42	36	29	23	17	19	14	13	9	7
Gretna, La	42	36	29	23	17	19	14	13	9	7
Harvey, La	42	36	29	23	17	19	14	13	9	7
Marrero, La	44	37	31	24	18	20	14	13	10	8
Westwego, La	44	37	31	24	18	20	14	13	10	8
Westwego Wharves, La	44	37	31	24	18	20	14	13	10	8

[3] Reissued from Supplement No. 1, effective September 5, 1931.
[4] Reissued from Supplement No. 5, effective August 24, 1932.

Exceptions to Ratings in Current Western Classification

Item No.	Articles—carloads, except as otherwise indicated	Rating
	Effective September 3, 1935	
	(Expires with December 31, 1935, unless sooner cancelled, changed or extended)	
	Acid, Picric (High Explosive), dry	First Class.
	High Explosives, not otherwise indexed by name	
	Low Explosives, not otherwise indexed by name, or Black Powder	
5[1]	Powder, Smokeless, for cannon	
	Powder, Smokeless, for small arms	
	Nitro-Cellulose, dry	
	Nitro-Starch, dry	
	Trinitrotoluol, dry	
	Less than carloads. (File 5293)	
8[2]	Manufactured Tobacco, Smoking, in bales, barrels or boxes, or in pails two or more strapped together; less than carload rating will also apply on cut or granulated Tobacco, other than Fine Cut Chewing, which may be used for chewing as well as smoking	Second Class (See Note).
	Cigarettes, Tobacco, with paper wrappers, in packages conforming to the requirements of the current Western Classification; in connection with the First Class rating on less than carloads provided in said Classification; less than carloads	
	Note:	
	A—Applicable only as proportional rates on Interstate traffic having origin or destination beyond the State of Louisiana	
	B—Applicable only in connection with Class Rates provided in Item No. 170–A.	

Rules and Regulations

Item No. 25–B cancels No. 25–A.[3]

Switching Empty Equipment

Canceled; other provisions of tariff will apply.
Effective September 3, 1935.
Item No. 40–A, cancels No. 40.[3]

Allowance for Switching at Marrero, La.

Canceled.[4] Allowance discontinued. (File 10104–2.)
Item No. 95–A cancels No. 95.[4]

Footnotes at end of table.

Charge for Furnishing Equipment for Terminal Switching

(*a*) Unless otherwise specifically provided, where carrier furnishes an empty car to be loaded, an extra switching charge of $3.60 per car will be made. This charge will not be made on shipments on which a carrier receives freight revenue other than the switching charge. (See exception.)

(*b*) The extra switching charge specified in paragraph (*a*) will not be assessed by this carrier where shippers or consignees whose goods are being handled furnish their own cars, without expense to the carrier.

(*c*) When a car is furnished by this carrier for a loaded switch movement to an industry located on its rails to be used for return load by that industry, to points on or via the lines mentioned in item No. 10, extra charge of $3.60 will not apply on initial switch movement.

EXCEPTION.—The provisions of this item will not apply on interstate traffic, including export, import, and coastwise traffic moving under column 3 rates published in items Nos. 190 and 200–A, or reissues.

Effective September 3, 1935, except as noted.

Item No. 130–C, cancels No. 130–B.

List of Industries and Warehouses Located on the Rails of This Company Within the Port Limits of New Orleans, La.

Name	Business	Location
Acme Warehouse (National Biscuit Co.)	Public Warehouse	New Orleans.
American Molasses Co	Molasses	Gretna.
Appalachian Warehouses, Division of the Douglas Public Service Corporation, Inc.	Storage warehouse [7]	New Orleans.
Babcock, Phillip W		
Celotex Company	Building materials	Marrero.
Chickasaw Cooperage Co	Cooperage	Gretna.
Chickasaw Wood Products Company	Cooperage and petroleum products.	Gretna.
Commercial Solvent Corporation [6] (Formerly Rossville Commercial Alcohol Corp.).	Alcohol	Harvey and Westwego.
Consumers Biscuit Company	Cakes and crackers	New Orleans.
Continental Can Co	Cans	Harvey.
Coyle & Co., W. G., Inc	Coal	Gouldsboro.
Davison-Pick Fertilizer Service, Inc	Fertilizer	Gretna.
Douglas Public Service Corporation, Inc., The	Oil and molasses storage terminal.	Marrero.
Gretna Grocery & Grain Co	Feed and groceries	Gretna.
Gulf Refining Company	Petroleum products	Gretna.
Gulf States Terminal & Transportation Co	Storage	Westwego.
Gulf & Valley Cotton Oil Company	Cotton seed products	Gretna.
Johns-Mansville Products Corp. (Formerly Asbestos Wood and Shingle Co.):	Asbestos shingles and asphalt roofing.	Gretna.
Louisiana Cotton Press		

[1] Indicates reduction.
[2] Reissued from Supplement No. 8, effective April 10, 1934.
[3] Issued in compliance Interstate Commerce Commission's Order in twenty-third supplemental report in Ex Parte No. 104, of July 11, 1935.
[4] Indicates advance.
[5] Reissued from Supplement No. 9, effective August 4, 1934.
[6] Indicates change other than advance or reduction.
[7] Reissued from Supplement No. 4, effective July 5, 1932.

Item No. 175–A, Cancels No. 175.[1] Class Rates Between Gouldsboro, Gretna, Harvey, Marrero, Westwego, Westwego Elevators, and Westwego Wharves, La.

[Rates in cents per 100 pounds]

Distance, miles	Classes									
	1	2	3	4	5	A	B	C	D	E
5 miles and under	36	31	25	20	14	16	12	11	8	6
10 miles and over 5	38	32	27	21	15	17	12	11	9	7

Item No. 180–A, cancels No. 180.[4] Canceled. For rates to apply, see Items Nos. 170–A and 175–A.

Item No. 185–A, cancels No. 185.[1] Canceled. For rates to apply, see Items Nos. 170–A and 175–A.

Reissued from supplement No. 1, effective September 5, 1931. Refer to pages 11 and 12 of tariff, and cancel heading shown thereon and substitute the following in lieu thereof:

Footnotes at end of table.

Rate Section No. 2.—For Application of Rates and Explanation of Column Numbers Shown Below, See Tariff

[Rates in dollars and cents per car, except as otherwise provided]

Item No.	Commodities	From (except as noted)	To (except as noted)	Rates		
		Between	And	Column 1	Column 2	Column 3
200-A cancels 200 [2]	All freight (except as shown in items Nos. 275 and 295).	Marrero, La.	New Orleans, La.	$8.30 (note 5); $10.00 (note 6).		$8.10 (note 5); $12.00 (note 6). 2 cents per 100 pounds, minimum, $9.00, and maximum, $11.50 per car.[3]
205-A cancels 205	Effective September 3, 1935. Canceled. other provisions of Tariff will apply.[4]					
250-A Cancels 250 [5]	(Applicable on Interstate Traffic only, and must not be used on Intrastate Traffic.) Alcohol	Distillery Spur No. 1, La. Distillery Spur No. 2, La.	New Orleans, La.	$13.50; $13.50 (Note 7).[6]		$17.10.[7]
253 [5]	Blackstrap Molasses and Alcohol	Westwego, La.	New Orleans, La.	$13.50 [6]		
257-A Cancels 257	Reissued from Supplement No. 7, effective September 20, 1933. Expires with July 31, 1934, unless sooner cancelled, changed or extended, after which date other provisions of this Tariff apply. Cotton	Westwego, La.; Westwego Wharves, La.	Interchange connection with the Public Belt R. R. in New Orleans, La.			$16.00.[8]

[1] Reissued from Supplement No. 5, effective August 24, 1932.
[2] Reissued from Supplement No. 4, effective July 5, 1932.
[3] Applies only on Coastwise, Import, and Export traffic.
[4] Indicates reduction.
[5] Reissued from Supplement No. 3, effective February 22, 1932.
[6] Applies as proportional rate only, and only on shipments destined to points in the following states: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia.
[7] Per car of not exceeding 45,000 pounds; excess weight to be assessed on basis of 2 cents per hundred pounds, observing maximum rate of $18.30 per car.
[8] Applies only on Export and Coastwise traffic, moving over city front wharves, New Orleans, La. This rate includes extra switching charge of $3.60 per car assessed where equipment is furnished by the T. P.-M. P. T. R. R. of New Orleans.

Note 5.—Applicable on Intrastate traffic only, and must not be used on Interstate traffic.

Note 6.—Applicable on Interstate traffic only, and must not be used on Intrastate traffic.

Note 7.—Rate is expressed in dollars per car of not exceeding 53,350 pounds; excess to be assessed on basis of 1½ cents per 100 pounds, observing maximum charge of $15.50 per car on entire shipment.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff unless otherwise specifically authorized by the Commission. I. C. C. No. Tex. 270 (Cancels I. C. C. No. Tex. 119). R. C. T. No. 210 (Cancels R. C. T. No. 115). Tariff Case File 6.

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

LOCAL FREIGHT TARIFF NO. 773-B (CANCELS TARIFF NO. 773-A)

Containing Allowances to Private Industries for Switching Carload Freight at Port Arthur, Texas, West Port Arthur, Texas [1]

Applicable on interstate and Texas intrastate traffic. Issued July 23, 1935. Effective September 3, 1935.

The Texas and New Orleans Railroad Company will pay to The Texas Company at Port Arthur, Texas, or to the Gulf Refining Company at West Port Arthur, Texas [1] (as the case may be) (see Note), an allowance of ninety (90) cents per car, as compensation for service, performed by The Texas Company, or the Gulf Refining Company [1] (as the case may be) (see Note), of switching carload freight, on which line haul transportation has been or will be performed, between loading or unloading tracks at the plant of The Texas Company at Port Arthur, Texas, or at the plant of the Gulf Refining Company at West Port Arthur, Texas (as the case may be) (see Note), on the one hand, and track connection with the Texas and New Orleans Railroad at Port Arthur, Texas, or West Port Arthur, Texas [1] (as the case may be) (see Note), on the other hand.

Such switching service, performed by The Texas Company, or the Gulf Refining Company [1] (as the case may be) (See Note), with compensation therefor paid by the Texas and New Orleans Railroad Company will be in lieu of the performance of such service by the Texas and New Orleans Railroad, as provided for in tariffs lawfully on file with the Interstate Commerce Commission or Railroad Commission of Texas requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks.

NOTE.—The allowance to the Gulf Refining Company at West Port Arthur, Texas, is applicable only on intrastate traffic. Said [2] allowance is hereby cancelled on interstate traffic. No allowance in effect. Issued by S. G. Reed, Freight Traffic Manager, 913 Franklin Avenue, Houston, Texas.

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[1] Applicable only on intrastate traffic.
[2] Denotes increase.

815-KKK *Exhibit being Gulf, Mobile & Northern Tariff Supplement No. 28 to I. C. C. No. 1168*

Filed August 19, 1935

INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedule hereto attached is a true copy of Supplement No. 28 to Gulf, Mobile and Northern Railroad Company Terminal Charges Tariff, I. C. C. No. 1168, said schedule having been filed with the said Interstate Commerce Commission on July 27, 1935.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 9th day of August A. D. 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

Charges resulting from rates in this schedule, or as amended, are subject to the provisions of C. R. Young's Tariff of Emergency Charges No. 300, I. C. C. No. 1935, supplements thereto or subsequent issues thereof. Supplement No. 28 to G. F. O. No. 2052-A. (Cancels Supplement No. 27.) Supplement No. 28 to I. C. C. No. 1168. (Cancels Supplement No. 27.) Supplements B and D (not filed with I. C. C.) and Supplements Nos. 19, 24, and 28 contain all changes from the original tariff that are effective on the date hereof.

GULF, MOBILE AND NORTHERN RAILROAD COMPANY

TERMINAL CHARGES TARIFF

Rates, Rules, and Regulations

Governing switching, drayage, handling, and transfer charges, terminal facilities and deliveries, also allowance for standards, strips, and supports; customhouse brokerage fees; dunnage charges; freight shipped in cars of greater or less capacity than ordered, or in new rebuilt, or defective cars; loading and unloading of carload freight; loading on tropical fruits; order notify shipments; overloaded cars; reweighing of cars; stopping in transit of carload shipments of live poultry for completion of load; storing coal in transit at New Orleans, La.; transit privileges on cotton seed, meal, and cake at New Orleans, La.; transit privileges on corn oil at Gretna, La.; wharfage and loading on tropical fruits; wharfage, tollage, wharf demurrage; storage or sheddage at New Orleans, La.; and other terminal charges and privileges applicable at all stations on the Gulf, Mobile and Northern Railroad (Louisiana Division). (See item 358 of tariff.)

This supplement is governed by the classification, rules, and regulations governing the Tariff, unless otherwise specified herein. Issued July 26, 1935. Effective August 29, 1935 (except as otherwise provided herein). Issued by K. G. Gottschaldt, A. G. F. A., 71 Conti Street, Mobile, Ala. L. C. Hollingsworth, A. G. F. A., 71 Conti Street, Mobile, Ala. E. B. deVilliers, A. G. F. A., 333 Balter Building, New Orleans, La. Approved by J. O. Gill, G. F. A., 71 Conti Street, Mobile, Ala. W. T. Boardman, F. F. A., 71 Conti Street, Mobile, Ala. Mailing List No. 2052. Authority File No. 510. File No. 858–B26. 135–B26.

Amendment to Item 70 of tariff (Cancels Amendment to Item 70, Page 2, of Supplement No. 19).[1] [2]

Absorption of Switching Charges of Connecting Lines

Refer to Paragraphs (i), (l), and (m) of Item 70 of tariff and amend same to read as follows:

(i) On carload competitive traffic (see Item 20), received or forwarded via the Gulf, Mobile and Northern Railroad, for or from industries, switches or warehouses located on the tracks of the New Orleans Public Belt Railroad in New Orleans, La., the Gulf, Mobile and Northern Railroad will absorb the switching charges of the New Orleans Public Belt Railroad, not to exceed the following amounts per car, viz:

All carload freight except as noted below	$6.30
Explosives	12.00
Brick shells, rip-rap, or broken stone	4.50

Charges of the New Orleans Public Belt Railroad in excess of such amount will be in addition to the freight rate.

(l) Cancel. See Paragraphs (a) and (i).

(m) On carload shipments of sand or gravel from stations on the Gulf, Mobile and Northern Railroad for delivery to industries on the Illinois Central Railroad, Louisiana & Arkansas Railway, New Orleans & Lower Coast Railroad, Texas & New Orleans Railroad, Texas Pacific-Missouri Pacific Terminal Railroad and Yazoo & Mississippi Valley Railroad in Algiers, Amesville (Marrero), Goldsboro, Gretna, Harvey, New Orleans, La., or Westwego, La., where intermediate switching via the Louisville & Nashville Railroad or New Orleans Public Belt Railroad is performed, the Gulf, Mobile and Northern Railroad will absorb not exceeding $2.25 per car of the switching charges to such industries.[3]

Item No. 90–C (Cancels Item 90–B).[4]

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[1] REISSUED from Supplement No. 22, effective March 14, 1935.

[2] Departure from the terms of Rules 8 (f) and 9 (a) of Tariff Circular No. 20 is authorized under special permission of the Interstate Commerce Commission No. 119220 of October 7, 1932, as amended.

[3] Applicable only on traffic having origin, destination, and entire transportation within the State of Louisiana. Effective February 14, 1935, L. P. S. C. Authority No. 4836–R, Amendment No. 1, of January 31, 1935.

[4] REISSUED from Supplement No. 23, effective April 25, 1935.

Rules and Regulations Governing Absorption of Switching, Charges Between New Orleans, La., and Belle Chasse, La., and Rates to Apply on Export and Import Traffic

Between Belle Chasse, La., and [4]—	Commodities, carloads	Extent to which switching charges of connecting and switching railroads are absorbed by the Gulf, Mobile and Northern Railroad Company
Points in Canada; also points in the following states of the United States: Alabama (see Note 2), Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, (west of the Mississippi River), Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi (see Note 2), Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee (see Note 2), Texas, Utah, Vermont, Virginia (see Note 2), Washington, West Virginia, Wisconsin and Wyoming.	All commodities, except: Petroleum and its products, lumber [5] and articles taking same rates of differentials higher to Belle Chasse, La., and also except Bituminous Rock and Road aggregates mixed or coated with asphalt, oil, tar and (or) lime.	Except as provided in Item 85 on traffic routed to or from New Orleans, La., via the Gulf, Mobile and Northern Railroad which pays the Gulf, Mobile and Northern Railroad to or from New Orleans, La., a freight rate or charge other than a switching rate or charge. The Gulf, Mobile and Northern Railroad will absorb intermediate switching charge of the New Orleans Public Belt R. R. of $2.25 per car, together with switching charges of the New Orleans and Lower Coast Railroad Company of not exceeding $16.30 per car, lawfully on file with the Interstate Commerce Commission, Charges in excess of such amount lawfully on file with the Interstate Commerce Commission will be in addition to the rate to or from New Orleans, La., (see Note 1).

[4] Fort St. Leon, La., shown in Items 90 and 95-B is hereby cancelled account no facilities for handling traffic.

[5] Rates on Lumber and articles taking same rates or differentials higher from points in the states of California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming will apply to Belle Chasse, La., when routed via the Gulf, Mobile and Northern Railroad, direct through New Albany, Miss., or through junctions in Kentucky or Tennessee.

Item No. 95–E (Cancels Item 95–D.)[7]

Rules and Regulations Governing Absorption of Switching Charges Apply on Export and Import Traffic Between New Orleans, La., and Belle Chasse, La., and Rates to

Between Belle Chasse, La., and—	Commodities, carloads	Extent to which switching charges of connecting and switching railroads are absorbed by the Gulf, Mobile and Northern Railroad Company
Points in the States of the United States, except as otherwise provided below: Alabama (see Note 3) Florida Georgia Louisiana (East of the Mississippi River) Mississippi (See Note 3) North Carolina South Carolina Tennessee (See Note 3) Virginia (See Note 3)	All Commodities	Switching charges of the New Orleans and Lower Coast R. R. to and from Belle Chasse, La., will not be absorbed, but will be in addition to the charges to or from New Orleans, La., as the case may be. (See Note 1.) Intermediate switching charges of the Louisville and Nashville Railroad or New Orleans Public Belt Railroad will be absorbed by the Gulf, Mobile and Northern Railroad, or will be in addition to the rate to or from New Orleans, La., in accordance with Item No. 70 o ftariff or as amended.

[7] REISSUED from Supplement No. 21, effective Feb. 25, 1935.

For explanation of abbreviations, see Page 4 of tariff.

NOTE 1.—When rates applicable on import or export traffic to or from New Orleans, La., do not apply to or from shipside, the import or export shipside rate to or from Belle Chasse, La., will be made by adding the handling charges named in Agent W. P. Emerson's Joint Demurrage, Storage and Handling Charges Tariff No. 4-M, I. C. C. No. 196 (G. M. & N. R. R., G. F. O. No. 1614), supplements thereto or successive issues thereof (see Exceptions).

EXCEPTION.—The provisions of this note are not applicable on lumber and articles taking same rates or arbitraries higher, as rates on this traffic are subject to the general application set forth in Items 90 and 95 of tariff, or as amended.

NOTE 2.—Includes only points in the States of Alabama, Mississippi, Tennessee, and Virginia on and north of the line of the Southern Railway from Memphis, Tenn., to Chattanooga, Tenn., thence on and north of the Southern Railway through Morristown, Tenn., to Bristol, Tenn.-Va., thence on and north of the Norfolk and Western Ry. to Norfolk, Va.

NOTE 3.—Includes only points in the States of Alabama, Mississippi, Tennessee, and Virginia south of the line of the Southern Ry. from Memphis, Tenn., to Chattanooga, Tenn., thence south of the Southern Ry. thru Morristown, Tenn., to Bristol, Tenn.-Va., thence south of the Norfolk & Western Ry. to Norfolk, Va.

3 Correction Notice [1]

Supplement No. 12 cancels Supplement No. 7, Supplement No. 10 except portions under suspension and completes cancellation of Supplement No. 8.

Rates, Rules, and Regulations

Amendment to Item No. 100 of Tariff (Cancels amendment to Item No. 100 of tariff on Page 3 of Supplement No. 26).[2] [3]

Rules Governing Absorption of Switching Charges to and From Algiers,[4] Amesville (Marrero), Distillery Spur No. 1 and No. 2, Gouldsboro, Gretna, Harvey, Westwego, Westwego Elevators and Westwego Wharves, La.

Refer to Item No. 100 of Tariff and amend Sections 2 and 3 as follows:

Between Algiers, Amesville (Marrero), Distillery Spur No. 1 and No. 2, Gouldsboro, Gretna, Harvey, Westwego, Westwego Elevators and Westwego Wharves, La. and	Commodities carloads	Extent to which switching charges of connecting and switching railroads are absorbed by the Gulf, Mobile and Northern Railroad Company
Section 2.—Same points as described in Section 1 (except non-competitive points, see Section 3). (For explanation of non-competitive points, see Item No. 20. Not applicable on traffic to or from Distillery Spur No. 1 and No. 2, Westwego, Westwego Elevators and Westwego Wharves, La.	Alcohol, asphaltum, bags, burlap and/or cotton. Benzol, candles, cans, N. O. I. B. N., including jacketed cans, keys or can tops, when shipped with cans, cement Corn, corn cob meal, feed (animal or poultry), other than condimental or medicinal, in bulk in bags, corn husks (corn shucks), hay and straw meal, carloads Cottonseed oil pitch Cottonseed products, viz.: Black grease Cooking oil Lard substitutes or compounds Meal [3] ___, cake [3] ___, hull [3] Oil Soap stock ___ tank bottoms Fertilizers, as described in Agent F. L. Speiden's Freight Tariff No. 392, I. C. C. No. A-746, (Glenn Series), (G. M. & N. No. 1321), supplements thereto or successive issues thereof Fibreboard, not decorated (celotex) [10] Iron and steel articles, manufactured [6] Iron or steel drums or barrels empty Lard [7] Molasses Oil, petroleum and its products, as described in Agent F. L. Speiden's Freight Tariff No. 16-U, I. C. C. No. 1722, (G. M. & N. G. F. O. No. 451), supplements thereto or successive issues thereof Oil, vegetable Paraffine Pipe, cast iron and fittings [6] Pitch, coal tar [9] Pulpboard [10] Roofing and building material, as described in Note B of Exceptions No. 11 to Southern Classifications, Agent E. H. Dulaney's I. C. C. No. 50, supplements thereto or successive issues thereof and tariffs lawfully on file with the Interstate Commerce Commission, straight or mixed carloads (see Note 2)[10] Rosin and rosin sizing Slate, viz.: Roofing, natural or artificial, not flexible (asbestos shingles, hard), as described in Note B of Exceptions No. 11 to Southern Classification, Agent E. H. Dulaney's I. C. C. No. 50, supplements thereto or successive issues thereof; and tariffs lawfully on file with the Interstate Commerce Commission, straight or mixed carloads (see Note 2)[10] Soap [5] Sugar Sulphate of alumina	New Orleans, La., proper, rates will apply provided the charges of the Texas and New Orleans Railroad, Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans and/or N. O. & L. C. R. R., to or from interchange with the G. M. & N. R. R., or connecting lines in New Orleans, La., are not in excess of one and one-half ($1\frac{1}{2}$) cents per hundred pounds, minimum $7.20 per car, maximum $9.00 per car, when to or from Algiers,[4] Gouldsboro, Gretna and Harvey, La., and $10.00 per car when to or from Amesville (Marrero), La. Charges in excess of such amounts, lawfully on file with the Interstate Commerce Commission, will be in addition to the New Orleans, La., proper, rates.
Section 3.—Noncompetitive points. (For explanation of noncompetitive points, see Item No. 20). Not applicable on traffic to or from Distillery Spur No. 1 and No. 2, Westwego, Westwego Elevators and Westwego Wharves, La.		Add to New Orleans, La., proper, rates, lowest charges shown in tariffs of the Texas and New Orleans Railroad, Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, and N. O. & L. C. R. R., lawfully on file with the Interstate Commerce Commission.

NOTE 2.—The absorption applicable in connection with roofing and building materials and slate articles will also apply on any of the roofing and building material when shipped in mixed carloads with any of the slate articles.

[1] Reissued from Supplement No. 14, effective Oct. 25, 1934.

[2] Reissued from Supplement No. 27, effective July 30, 1935.

[3] Departure from the terms of Rules 8(f) and 9(a) of Tariff Circular No. 20 is authorized under special permission of the Interstate Commerce Commission No. 119220 of October 7, 1932, as amended.

[4] All shipments for Naval Station at Algiers, La., must be fully prepaid.

[5] Applies only on shipments to and from Algiers, Gretna, Gouldsboro or Harvey, La.

[6] Applies on manufactured iron and steel articles, as described in Item 4000, Pages 99 thru 104, inclusive, Agent F. L. Speiden's Manufactured Iron Tariff No. 47-J, I. C. C. No. 1468 (G. M. & N. G. F. O. No. 134), supplements thereto or successive issues thereof from Birmingham, Ala., and group as shown in Item 3962, Page 98 of Agent F. L. Speiden's Manufactured Iron Tariff No. 47-J, I. C. C. No. 1468 (G. M. & N. G. F. O. No. 134), supplements thereto or successive issues thereof.

[7] Applies only from Gretna and Harvey, La.

[8] Applies only from Birmingham, Ala., and group points as shown in Item No. 3962, Page 82 of Agent F. L. Speiden's Manufactured Iron Tariff No. 47-J, I. C. C. No. 1468 (G. M. & N. G. F. O. No. 134), supplements thereto or successive issues thereof.

[9] Applies only on shipments from Ensley, Ala., to Gretna, La.

[10] When between points shown in Section 2, the absorption applicable in connection with articles bearing this reference mark ([10]) will also apply on mixed carloads of any of said articles subject to the highest carload minimum weight of any article loaded in the car.

For explanation of abbreviations, see page 4 of tariff.

4 Item No. 147.[1] Drayage at Columbia, Miss.

When carload shipments or less than carload shipments aggregating 6,000 pounds or more, destined to or received from competitive points, can be loaded directly into or unloaded directly from cars at warehouses (other than railroad warehouses) and industries on tracks of other railroads in the City of Columbia, Miss., the Gulf, Mobile and Northern Railroad reserves the right to handle by dray, in lieu of switching services, through its contract drayman.

Item No. 200–A (Cancels Item No. 200).[2] Dunnage Allowance on Imported Bulk Salt Cake

Rates on Imported Bulk Salt Cake, carload, from New Orleans, La., include the cost of dunnage.

Where shippers furnish the dunnage and do the loading, amount of $1.50 per car will be paid them to cover the cost of dunnage.

Item No. 220–C (Cancels Item No. 220–B).[3] Estimated Weights on Brazilian Coffee From New Orleans and Port Chalmette, La.

Cancel. For rules to apply refer to C. R. Young's Freight Tariff No. 78–AA, I. C. C. No. 1861, and Agent W. P. Emerson's Freight Tariff 23, I. C. C. No. 204, supplements thereto or reissues thereof.

Amendment to Item 240–C, Page 4 of Supplement No. 19.[2] [4] Import Green Coffee Through the Port of New Orleans, La.

Refer to paragraph (b) of Item 240–C, page 4 of Supplement No. 19, and amend same to read as follows:

(b) In order to obtain the benefit of import rates on shipments stored at the port of entry in or on property other than that operated by railroad or wharf companies which shipments may be stopped for the purpose of storage, cleaning, separation, resacking, reconditioning, grading, and/or mixing the owner or his authorized agent must register such imported shipments with the Southern Weighing and Inspection Bureau and/or Western Weighing and Inspection Bureau, on forms prescribed or approved by said Bureaus within 31 days of date of entry at such port, and subject to rules and regulations hereinafter provided, at time of reshipment furnish the inland carrier with a certificate of importation in the following manner:

"In conformity with the rules and regulations of Tariff No_____ we hereby certify that this shipment, or its exact equivalent, was imported from (foreign country)_____Ex. Steamship _____Date_____, _____Weighing and Inspection Bureau Registration No_____."

[1] Reissued from Supplement No. 16, effective December 5, 1934.
[2] Reissued from Supplement No. 23, effective April 25, 1935.
[3] Reissued from Supplement No. 22, effective March 14, 1935.
[4] Departure from the terms of Rules 8 (f) and 9 (a) of Tariff Circular No. 20 is authorized under special permission of the Interstate Commerce Commission No. 119220 of October 7, 1932, as amended.

Amendment to Item 315 of Tariff (Cancels Amendment on Page 4 of Supplement No. 25).[4] [5] Handling Charges at New Orleans, La., Port Chalmette, Algiers, Gretna, and Westwego, La., on Import and Export Shipments. For Loading and Unloading Cars Receiving From and Delivering to Steamships at New Orleans, Port Chalmette, Algiers, Gretna, and Westwego, La.

Refer to paragraphs (b) and (g) of Item 315 of Tariff and amend same to read as follows:

Export traffic

(b) Eliminate.

(b–1) In the absence of rates specifically published to shipside, New Orleans, Algiers, Gretna, Harvey, Port Chalmette, and Westwego, La., from territory specified in Paragraph (a), rates published by this carrier or other carriers to New Orleans, Algiers, Gretna, Harvey, Port Chalmette, and Westwego, La. (unless otherwise provided in tariff), will include all charges in movement of and deliveries to shipside at New Orleans, Algiers, Gretna, Harvey, Port Chalmette, and Westwego, La., on export traffic to foreign countries, including Cuba, the Philippine Islands, Puerto Rico, the Hawaiian Islands, and the Canal Zone of Panama. (See Exceptions.)

Import traffic

(g) Import traffic may be drayed direct from shipside to the freight depots of the Gulf, Mobile, and Northern Railroad at New Orleans, La., and when the service is performed by the shipper, the Gulf, Mobile and Northern Railroad will pay the said shipper the actual cost of drayage, but not exceeding the amounts shown below, which will be deducted from the published tariff freight rates and waybilled as advance charges (see Paragraph (i)), provided that each dray ticket contains certificate signed by shipper reading as follows: (See Note 1.)

"This is to certify that the articles named herein were handled this date direct from wharf to steamship."

Bags and Burlaps---[6]	Coffee------(3.8 cents per 100 pounds)[7]
Bagging----------[6]	Cotton Ties--------[6]
Cement-----[6]	Other merchandise--[6]

NOTE 1.—Where drayage allowance is made under the provisions of paragraph (g) of this Item, such allowance shall be based on the weight on which freight charges on the commodity are assessed.

Item No. 317–A (Cancels Item No. 317).[3] Application of Rates on Coal For Bunkerage Purposes at New Orleans, La.

Cancel. No rule in effect.

See note 4 from p. 505.
[5] Reissued from Supplement No. 26, effective July 2, 1935.
[6] Cancel. No drayage allowance made.
[7] Maximum 7 cents per bag.

Item No. 335–C (Cancels Item No. 335–B).[8] Application of Import Rates on Chinawood, Cocoanut, Copra, Palm, Palm Kernel, Peanut, Perilla, Sesame and Soya Bean Oils and Foots, Olive Oil Foots, Also Vegetable, Fish, and Sea Animal Oils From Shipside, New Orleans, La.

Cancel. No rule in effect.

Item 473 (Addition—Reduction). Terminal Allowances to the Great Southern Lumber Company and (or) Bogalusa Paper Company, Incorporated, Gaylord Bag and Paper Company, New Orleans Corrugated Box Company, Bogalusa Turpentine Company, Union Bag & Paper Corporation, at Bogalusa, Louisiana.

The above named industries are located within an industrial area within the switching limits of the Gulf, Mobile and Northern Railroad Company at Bogalusa, La. The Gulf, Mobile and Northern Railroad Company will perform the terminal switching service at its convenience on carload shipments originating at or destined to the plants of the industries. Such terminal switching service will consist of the handling of cars between the entrance to the industrial area and points convenient to the Gulf, Mobile and Northern Railroad Company adjacent to the plants.

When the Gulf, Mobile and Northern Railroad Company shall employ the industries to perform such terminal switching service for its account it will make an allowance to the industries therefor at the rate of 93 cents per loaded car, and for this allowance the industries shall also handle the empty car in the reverse direction.

For explanation of abbreviations see page 4 of tariff.

815–NNN *Exhibit being cancelation tariff filed by Yazoo & Mississippi Valley Railroad Company and other carriers to become effective on July 15, 1935*

Filed August 19, 1935

ILLINOIS CENTRAL RAILROAD COMPANY (SOUTHERN LINES) THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

First Revised Page 171–A Cancels Added Page 171–A. Tariff No. 2–B, I. C. C. No. 6700.

TERMINAL ALLOWANCES TO THE STANDARD OIL COMPANY OF LOUISIANA AT NORTH BATON ROUGE, LA.

Cancel.[1] Allowance Discontinued. Issued June 12, 1935. Effective July 15, 1935. Issued in compliance with order of the Interstate Commerce Commission in Ex Parte No. 104, fifth supplemental report of May 14, 1935. Issued by R. A. Trovillion, General Freight Agent, 135 East Eleventh Place, Chicago, Ill. (File GF–43–Baton Rouge.)

[8] Reissued from Supplement No. 26, effective July 1, 1935.
[1] Increase.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff unless otherwise specifically authorized by the Commission. I. C. C. No. Tex. 191. In lieu of I. C. C. No. Tex. 185, not filed with the Interstate Commerce Commission. (Cancels I. C. C. No. Tex. 124.) R. C. T. No. 169 (Cancels R. C. T. No. 165.) Tariff Case File 6.

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

LOCAL FREIGHT TARIFF NO. 757-G

(Cancels Tariff No. 757-F.) (Also cancels Tariff No. 757-E on Interstate Traffic.) Containing Allowances to Private Industries for Switching Carload Freight at Galena, Texas. Applicable on Interstate and Texas Intrastate Traffic.

Issued September 25, 1931. Effective October 29, 1931

The Texas and New Orleans Railroad Company will pay to The Texas Company an allowance of ninety (90) cents per car, as compensation for service, performed by The Texas Company, of switching carload freight, on which line haul transportation has been or will be performed, between loading or unloading tracks at the plant of The Texas Company, on the one hand, and track connection with the Texas and New Orleans Railroad at Galena, Texas,[1] or track connection with the Port Terminal Railroad Association of Houston, on the other hand (see note).

Such switching service, performed by The Texas Company with compensation therefor paid by the Texas and New Orleans Railroad Company, will be in lieu of the performance of such service by the Texas and New Orleans Railroad [1] or by the Port Terminal Railroad Association of Houston for account of the Texas and New Orleans Railroad, as the case may be, as provided for in Tariffs lawfully on file with the Interstate Commerce Commission or Railroad Commission of Texas, requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks.

NOTE.—The allowance herein provided for on traffic between loading or unloading tracks at the plant of The Texas Company and track connection with the Port Terminal Railroad Association of Houston is applicable only on cars received or delivered to The Texas Company at Houston, Texas, by the Port Terminal Railroad Association of Houston, for the account of the Texas and New Orleans Railroad.

Authority No. 6827. Issued by S. G. Reed, F. T. M., 913 Franklin Ave., Houston, Texas.

Supplement No. 1 to R. C. T. No. 169. Supplement No. 1 to I. C. C. No. Tex. 191 (Cancels I. C. C. No. Tex. 191).

[1] Indicates reduction.

TEXAS AND NEW ORLEANS RAILROAD COMPANY

(SOUTHERN PACIFIC LINES)

Supplement No. 1. Local Freight Tariff No. 757-G. (Supplement No. 1 contains all changes.) Containing Allowances to Private Industries For Switching Carload Freight At Galena, Texas.

Applicable only on Intrastate Traffic. (Amend title page of tariff accordingly.) Issued July 23, 1935. Effective September 3, 1935.

CANCELLATION NOTICE

Cancel tariff on interstate traffic only. No allowance in effect. (See Note.)[1]

NOTE.—Tariff remains in effect on intrastate traffic only.

(50) Authority 757-6. Issued by S. G. Reed, Freight Traffic Manager, 913 Franklin Avenue, Houston, Texas.

Rule 93.—Through rates from or to St. Louis, Mo., with the railroads or ferry lines subject to this rule, include the handling of freight between their industries, team tracks, or connection with connecting lines at St. Louis, Mo., and the Illinois Central Railroad at East St. Louis, Ill.

Rule 94-B cancels Rule 94-A.—Cancel. See Rule 88-A, page 88.

Rule 95-F cancels Rule 95-E.—(a) Except as shown in Note 1 below, connecting railroads' switching, on miscellaneous shipments of less carload freight loaded in one car from industries, warehouses, and/or team tracks, within switching limits of East St. Louis or St. Louis to freight depot of I. C. R. R. at East St. Louis, will be absorbed by I. C. R. R., provided shipments aggregate 6,000 pounds or more and each pays less carload rate.

Where absorption of connecting lines' switching charges is authorized in Paragraph (a) above, the I. C. R. R. may at its option perform the service with highway vehicles from industries and warehouses with individual or private side tracks (not team tracks) and the same charges and regulations applied as for rail movement, subject to rules and conditions as shown in Rule 99⅞. Additional Page 89-A.

(b) L. C. L. shipments for forwarding from the St. Louis-East St. Louis District via connecting lines to points where the I. C. R. R. cannot act as originating road haul carrier may be included in trap cars from industries on connecting lines to I. C. R. R. freight depot at East St. Louis at a charge of 3 cents per hundred pounds which includes delivery to transfer company. Such shipments will be in addition to and cannot be used in making up the minimum trap car weight.

Note 1.—Such cars may contain less than 6,000 pounds and connecting road's switching thereon, as outlined in above rule, will be absorbed by I. C. R. R., provided shipper pays a charge on the deficit

[1] Denotes increase.

between 6,000 pounds and actual weight based 20 cents per 100 pounds or fraction thereof.

Rule 96.—Connecting railroads' switching charges will be absorbed by I. C. R. R. on not less than fifteen (15) bales of Cotton, when loaded in one car, from points on or reached via I. C. R. R., whether from one or more consignors, to one consignee at East St. Louis, for delivery to cotton compresses; provided that each separate consignment pays less than carload rate and that switching charges on such cars do not exceed charges for a full carload.

Rule 97.—On Railroad Ties, carloads, forwarded from Carbondale, Ill., to East St. Louis on rates published in Agent B. T. Jones' Tariff No. 65–J, I. C. C. No. 2574, I. C. R. R. Tariff 4747–K, supplements thereto or successive issues thereof, the switching or trackage charges of intermediate switching lines will be absorbed by I. C. R. R., regardless of minimum revenue per car, as specified in Rule 85, page 88.

Rule 98–A cancels Rule 98.—Cancel. See Rules 84 to 99, inclusive, pages 88, 88–A, and 89.

Rule 99.—On freight moving between Belleville, Ill., and St. Louis, Mo., the switching charges of railroads subject to this rule will not be absorbed.

Rule 99½–C cancels Rule 99½–B.—(Applies on Illinois Intrastate traffic.)

Terminal allowances to St. Louis Gas & Coke Corporation, Cochem, Ill.

On all carload revenue shipments destined to or coming from the plant of the St. Louis Gas & Coke Corporation, the terminal switching is performed by the St. Louis Gas & Coke Corporation for the account of the Illinois Central Railroad Company.

On traffic on which the I. C. R. R. receives a road haul, the St. Louis Gas & Coke Corporation will be allowed for such services $1.25 per car out of the current East St. Louis, Ill., rates.

The above allowance includes the handling of the empty cars in the reverse direction or empty cars handled preparatory to loading

Rule 99¾–C cancels Rule 99¾–B.—(Applies on Interstate traffic only.)

Terminal Allowances to St. Louis Gas & Coke Corporation, Cochem, Ill.

Cancel.[1] Allowance discontinued.

Issued in compliance with order of the Interstate Commerce Commission in Ex Parte No. 104, Twenty-Eighth supplemental report of July 12, 1935.

(File Ex Parte 104, Part 2, Terminal Services.) Issued July 31, 1935. Effective September 3, 1935. Issued by R. A. Trovillion, General Freight Agent, 135 East Eleventh Place, Chicago, Ill.

[1] Increase.

816 [Titles omitted.]

Stipulation re transcript of record and transmission of various exhibits, etc., in original to United States Supreme Court

Filed October 15, 1937

It is hereby stipulated and agreed by and between counsel for the parties to the above-entitled causes, for the purpose of settling the record for the appeals therein to the Supreme Court of the United States, pursuant to Equity Rule 75, that;

1. The narrative statement of testimony attached hereto is a true and correct transcript in narrative form of that part of the oral testimony contained in the certified copy of the record of proceedings before the Interstate Commerce Commission introduced in evidence in these causes, covering the four plants involved in these appeals.

2. The entire record of testimony and exhibits before the Interstate Commerce Commission (introduced in evidence in this court as an exhibit and consisting of printed volumes 1 to 12, inclusive, of oral testimony, and 1 to 5, inclusive, of exhibits) and the transcript of testimony and other exhibits introduced at hearing on application for final injunction before the District Court, shall be transmitted in original form by the clerk of this court to the clerk of the Supreme Court and shall there be retained as a part of the record in these causes, and may be referred to by the Supreme Court and by counsel for appellants and appellees in their briefs and upon oral argument of these causes in the Supreme Court.

Dated September 24th, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT H. JACKSON,
Assistant Attorney General.
(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Signed) DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel for Appellants.
(Signed) JOHN S. BURCHMORE,
Counsel for Pan American Petroleum Co. et al., Appellees.

817 ORDER

It is ordered, that the within and attached stipulation and narrative be, and the same are hereby, approved; and in preparing, certifying and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk is directed to proceed in accordance therewith.

(Signed) WAYNE G. BORAH,
United States District Judge.

NEW ORLEANS, LA., *October 15, 1937.*

818 In United States District Court

[Number and titles omitted.]

Notice of appeal

Filed June 18, 1937

To PAN AMERICAN PETROLEUM CORPORATION, COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF CELOTEX COMPANY, GREAT SOUTHERN LUMBER COMPANY, BOGALUSA PAPER COMPANY, INC., AND STANDARD OIL COMPANY OF LOUISIANA, PLAINTIFFS:

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the United States of America, defendant, and the Interstate Commerce Commission, intervening defendant, in the above entitled causes, and each of them do hereby appeal to the Supreme Court of the United States from the final decrees of the District Court made and entered on the 28th day of April 1937, which set aside, annulled, suspended, and permanently enjoined the orders of the Interstate Commerce Commission complained of in said causes.

June 10, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.
By ROBERT WEINSTEIN,
Asst. U. S. Attorney.
ROBERT H. JACKSON,
Asst. Attorney General.
ELMER B. COLLINS,
Special Asst. to the Attorney General.
DANIEL W. KNOWLSON,
E. M. REIDY,
Counsel, Interstate Commerce Commission.

Service of the foregoing notice of appeal and the receipt of a copy thereof are hereby acknowledged this 16th day of June 1937.

(Signed) JOHN S. BURCHMORE,
WALTER, BURCHMORE AND BELNAP,
Solicitors for Plaintiffs.

819 In United States District Court

[Consolidated numbers and titles omitted.]

Petition for appeal

Filed June 18, 1937

The United States of America, defendant, and the Interstate Commerce Commission, intervening defendant in the above entitled

causes, feeling themselves aggrieved by the final decrees entered in said causes by this Court on April 28, 1937, pray an appeal from said decrees to the Supreme Court of the United States.

The particulars wherein they consider the decrees erroneous are set forth in the assignment of errors accompanying this petition and to which reference is hereby made.

Said defendants pray that a transcript of record, proceedings, and papers on which said decrees were made and entered duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated June 10, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.
ROBERT WEINSTEIN,
Asst. U. S. Attorney.
ROBERT H. JACKSON,
Asst. Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel, Interstate Commerce Commission.

Order allowing appeal

In the above entitled causes, the United States of America, defendant, and the Interstate Commerce Commission, intervening defendant, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this court in these causes entered April 28, 1937, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is,

Ordered and Decreed that the appeals be, and the same are hereby allowed as prayed for.

This 18th day of June 1937.

(Signed) RUFUS E. FOSTER,
United States Judge.

Service of the foregoing order allowing appeal and the re-
820 ceipt of a copy thereof are hereby acknowledged this 18th day of June 1937.

(Signed) JOHN S. BURCHMORE,
WALTER, BURCHMORE & BELNAP,
Solicitors for Plaintiffs.

821 In United States District Court

Assignment of errors

Filed June 18, 1937

United States of America and Interstate Commerce Commission, defendants in the above-entitled cases, now come and file the following assignment of errors in connection with their petition for an appeal from the final decree entered by this Court on April 28, 1937, in each of said cases.

The District Court:

1. In entering the decrees enjoining, setting aside, and annuling the orders of the Interstate Commerce Commission.

2. In holding that the switching and "spotting" of cars within the respective industrial plants of the plaintiffs is "transportation" within the meaning of the Interstate Commerce Act subdivisions (3), (4), and (6) of Section 1 of said Act.

3. In holding as follows: "There is no evidence that such railroads are prohibited by the plaintiffs from performing such service, nor that there are physical conditions which prevent them from doing so. Indeed, there appears to be no 'abnormal conditions' of any kind which would serve to relieve the railroads involved of the duty."

4. In holding that "Having the duty to perform the service, the railroads involved properly and lawfully contracted with the respective plaintiffs to perform it, and properly and lawfully made such plaintiffs allowances therefor in their tariffs."

5. In holding that in these cases and under the evidence therein "The Commission was without power to wholly prohibit such allowances."

6. In holding that the Commission's orders in these cases are not based on sufficient findings necessary to support them nor do such findings appear in the reports which are made a part of the orders.

7. In granting the injunctions sought in all cases.

8. In failing and refusing to hold that the Commission's orders in these cases are within the power conferred upon it by the Interstate Commerce Act.

822 9. In failing and refusing to hold that the findings made by the Commission in each of these cases are sufficient to support the respective orders.

10. In failing and refusing to hold that each of the orders in these cases is supported by substantial evidence.

11. In failing and refusing to dismiss the petition in each of these cases for want of equity.

12. In failing and refusing to find and hold that the spotting of cars within the industrial plants of the plaintiffs in these cases is not "transportation" for which the carriers are compensated under their line-haul rates.

13. In failing and refusing to hold that the "spotting" of cars within the industrial plants of the plaintiffs is a private or plant service which the respective railroads may not lawfully perform or pay plaintiffs for performing under their line haul rates or without charge in addition to said rates.

14. In failing and refusing to find that no custom or practice, long continued or otherwise, exists among plaintiffs and the railroads which serve their plants or among carriers and shippers generally of including and performing or paying for "spotting" of cars within industrial plants as part of the service for which railroads are compensated by their line haul freight rates.

15. In failing and refusing to give and accord proper legal force and effect to the evidence of record in these cases.

16. In failing and refusing to consider separately and to give proper legal effect to the particular evidence showing the actual physical and other circumstances and conditions under which the "spotting" services are performed at the particular plants of the respective plaintiffs, and in assuming that the facts and circumstances concerning the nature of the "spotting" service and the conditions of its performance are the same at each of the plants of the five plaintiffs.

(Signed) RENE A. VIOSCA,
United States Attorney.
By ROBERT WEINSTEIN,
Asst. U. S. Attorney.
ROBERT H. JACKSON,
Asst. Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Signed) DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

JUNE 10TH, 1937.

828 In United States District Court

[Number and titles omitted.]

Notice to attorney general of the State of Louisiana

Filed June 30, 1937

To the honorable the ATTORNEY GENERAL OF THE STATE OF LOUISIANA:

Pursuant to the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 221, you are hereby notified that the defendant, United States of America, and the Interstate Commerce Commission, intervening defendant, in the above-entitled causes, have taken an appeal to the Supreme Court of the United States from the final decrees of the United States District Court entered April 28, 1937, and the order

allowing appeal makes the same returnable within 40 days from the date hereof.

June 8, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.
ROBERT H. JACKSON,
Asst. Attorney General.
ELMER B. COLLINS,
Special Asst. to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of a copy of the foregoing notice is hereby acknowledged this 14th day of June, 1937.

(Signed) G. L. PORTERIE,
Attorney General, State of Louisiana.

829 [Citation in usual form showing service on John A. Burchmore, filed June 18, 1937, omitted in printing.]

830 In United States District Court

[Titles and numbers omitted.]

Order of July 21, 1937, extending time for filing appeal in Supreme Court of the United States

Filed July 23, 1937

On motion of counsel for United States of America and Interstate Commerce Commission, appellants, and good cause therefor having been shown, it is ordered that the time for filing the record and docketing the appeal in the above entitled causes in the Supreme Court of the United States be, and the same is hereby extended to and including October 1, 1937.

This July 21, 1937.

(Signed) RUFUS E. FOSTER.
United States Circuit Judge.

831 In United States District Court

In Equity 314 (New Orleans Division). In Equity No. 315 (New Orleans Division). In Equity No. 317 (New Orleans Division). In Equity No. 331 (Baton Rouge Division)

[Titles omitted.]

Order extending time for filing record

On motion of counsel for United States of America and Interstate Commerce Commission, appellants, and good cause therefor having been shown, it is ordered that the time for filing the record and docketing the appeal in the above entitled causes in the Supreme

Court of the United States be, and the same is hereby, extended to and including November 1, 1937.

Dated September 24, 1937.

(Signed) WAYNE G. BORAH,
United States District Judge.

Approved this 17th day of September 1937.

(Signed) JOHN S. BURCHMORE,
Attorney for Petitioners-Appellees.

Copy forwarded to Supreme Court September 20th/37.

832 *Summons and Severance to Yazoo and Mississippi Valley Railroad Co. and Illinois Central Railroad Company*

Filed June 18, 1937

In United States District Court

[Titles omitted.]

In Equity No. 314 (New Orleans Division). In Equity No. 331 (Baton Rouge Division)

To THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY.
ILLINOIS CENTRAL RAILROAD COMPANY.

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decrees of the above entitled Court, entered April 28, 1937, setting aside, annuling, and enjoining the enforcement of the orders of the Interstate Commerce Commission which are described in petitions in the above-entitled causes, wherein you are defendants.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decrees of the District Court without joining you.

June 7th, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel for Interstate Commerce Commission.

833 Service of the foregoing summons and severance, and the receipt of a copy thereof are hereby acknowledged this 12th day of June, 1937.

(Signed) ELMER A. SMITH,
Attorney for the Yazoo & Mississippi Valley Railroad Company.
(Signed) ELMER A. SMITH,
Attorney for Illinois Central Railroad Co.

834 In United States District Court

[Title omitted.]

In Equity No. 315 (New Orleans Division)

Summons & severance to Missouri Pacific Railroad Company (L. W. Baldwin & Guy A. Thompson, trustees)

Filed June 18, 1937

To Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees):

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, Intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above entitled Court entered April 28, 1937, setting aside, annuling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

(Signed) Rene A. Viosca,
United States Attorney.

835 (Signed) Robert H. Jackson,
Assistant Attorney General.
(Signed) Elmer B. Collins,
Special Assistant to the Attorney General.
(Signed) Daniel W. Knowlton,
(Signed) E. M. Reidy,
Counsel, Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12 day of June 1937.

(Signed) H. H. Larinson,
Attorney for Missouri Pacific Railroad Co.

836 In United States District Court

[Title omitted.]

In Equity No. 315 (New Orleans Division)

Summons and severance to the Texas & Pacific Rwy. Co.

Filed June 30, 1937

To The Texas & Pacific Rwy. Co.:

You are hereby invited to join with the United States, defendant and the Interstate Commerce Commission, Intervening defendant,

in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above entitled Court entered April 28, 1937, setting aside, annulling and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.

837 (Signed) ROBERT H. JACKSON,
Assistant Attorney General.

(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.

(Signed) DANIEL W. KNOWLTON,

(Signed) E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 15 day of June 1937.

(Signed) SPENCER, GIDIERE, PHELPS & DUNBAR,
Attorneys for The Texas & Pacific Rwy. Co.

838 In United States District Court

Filed June 18, 1937

Summons and severance to Texas & New Orleans R. R. Co.

[Title omitted.]

In equity No. 315 (New Orleans Division)

To TEXAS & NEW ORLEANS RAILROAD COMPANY:

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, Intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above entitled Court entered April 28, 1937, setting aside, annuling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal

for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.

839 (Signed) ROBERT H. JACKSON,
Assistant Attorney General.
(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Signed) DANIEL W. KNOWLTON,
(Signed) E. M. REIDY,
Counsel, Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12th day of June 1937.

(Signed) J. H. TALLICHET,
Attorney for Texas & New Orleans Railroad Co.

840 In United States District Court

In Equity No. 315 (New Orleans Division)

[Title omitted.]

Summons & severance to Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans

Filed June 30, 1937

To: TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS:

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, Intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above entitled Court entered April 28, 1937, setting aside, annuling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.

841 (Signed) ROBERT H. JACKSON,
Assistant Attorney General.
(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Signed) DANIEL W. KNOWLTON,
(Signed) E. M. REIDY,
Counsel, Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 21 day of June 1937.

(Signed) WM. C. DUFOUR,
Attorney for Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.

842 In United States District Court

In Equity No. 317 (New Orleans Division)

[Title omitted.]

Summons and severance to G. M. & N. R. R. Co., and acceptance of service

Filed June 30, 1937

To GULF, MOBILE & NORTHERN RAILROAD COMPANY:

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered April 28, 1937, setting aside, annulling and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.

843 In United States District Court

In Equity No. 331 (Baton Rouge Division)

[Title omitted.]

Summons and severance to Louisiana & Arkansas Railway Company and acceptance of service

Filed June 18, 1937

To LOUISIANA & ARKANSAS RAILWAY COMPANY:

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered April 28, 1937, setting aside, annuling, and enjoining

the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.

844 (Signed) ROBERT H. JACKSON,
Assistant Attorney General.
(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Signed) DANIEL W. KNOWLTON,
(Signed) E. M. REIDY,
Counsel for Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12th day of June 1937.

(Signed) A. L. BURFORD,
Attorney for Louisiana & Arkansas Railway Company.

845 In United States District Court

In Equity No. 331 (Baton Rogue Division)

[Title omitted.]

Summons and severance to N. O., Texas & Mexico Railway Company and acceptance of service

Filed June 18, 1937

To: NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY (L. W. BALDWIN, GUY A. THOMPSON, TRUSTEES):

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered April 28, 1937, setting aside, annuling, and enjoying the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal

for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.

846 (Signed) ROBERT H. JACKSON,
Assistant Attorney General.

(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.

(Signed) DANIEL M. KNOWLTON,

(Signed) E. M. REIDY,
Counsel, Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12th day of June 1937.

(Signed) H. H. LARIEU, JR.,
Attorney for New Orleans, Texas & Mexico Railway Company
(L. W. Baldwin, Guy A. Thompson, Trustees.)

847 In United States District Court

In Equity No. 314 (New Orleans) (Division). In Equity No. 315 (New Orleans) (Division). In Equity No. 317 (New Orleans) (Division). In Equity No. 331 (Baton Rouge) (Division)

[Titles omitted.]

Praecipe for transcript of record.

Filed August 6, 1937

To the CLERK OF THE ABOVE-ENTITLED COURT:

You will please prepare a transcript of the record in the above-entitled causes to be transmitted to the Supreme Court of the United States pursuant to the appeals of said Court heretofore taken, and incorporate in said transcript the following:

848 1. Bills of complaint in Nos. 314, 315, 317, and 331, and all exhibits filed with and as part of said bill of complaint in each case.

2. Orders in Nos. 314 and 315, filed August 9, 1935, fixing hearing on application for a preliminary injunction for August 19, 1935.

3. Notice in No. 331 of hearing set for July 14, 1935.

4. Answer of United States to each of said bills of complaint in Nos. 314, 315, 317, and 331.

5. Intervention of Interstate Commerce Commission in Nos. 314, 315, 317, and 331.

6. Answer of Interstate Commerce Commission in Nos. 314, 315, 317, and 331.

7. Answer of Illinois Central Railroad Company to bill of complaint in No. 314.

8. Answer of Yazoo & Mississippi Valley Railroad Company to bill of complaint in No. 314.

9. Order extending time within which defendant railroads may file answer in No. 315, filed September 11, 1935.

10. Answer of Texas and New Orleans Railroad Company to bill of complaint in No. 315, filed September 26, 1935.

11. Answer of Texas and Pacific Railway Company to bill of complaint in No. 315, filed October 15, 1935.

12. Answer of Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans to bill of complaint in No. 315, filed October 22, 1935.

13. Answer of Gulf, Mobile & Northern Railroad Company to bill of complaint in No. 317, filed November 6, 1935.

14. Answer of Illinois Central Railroad Company to bill of complaint in No. 331, filed August 7, 1935.

849 15. Answer of Yazoo & Mississippi Valley Railroad Company to bill of complaint in No. 331, filed August 7, 1935.

16. Order entered July 10, 1935, in No. 331, fixing hearing for July 12, 1935.

17. Interlocutory injunction in No. 331, filed July 12, and another filed July 13, with Marshal's return.

18. Interlocutory injunction entered in Nos. 314, 315, and 317 on August 19, 1935.

19. The following documents introduced in No. 314 on application for an interlocutory injunction: (a) Tariff of Yazoo & Mississippi Valley cancelling allowances effective August 22, 1935, and (b) Tariff schedules of defendant carriers providing for the allowance, and described as second and third revised pages 175-B of tariff I. C. C. No. 6700.

20. The following documents introduced in No. 315 on application for a preliminary injunction:

(a) Returns to questionnaire of January 14, 1932, filed with the Interstate Commerce Commission by the Texas and Pacific Railway Company, the Missouri Pacific Lines, Texas & New Orleans Railroad Company, Gulf, Colorado & Santa Fe Railway Company, Louisiana & Arkansas Railway Company, and return and supplemental return of The Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company, to aforesaid questionnaire;

(b) Tariff of Morgans Louisiana & Texas Railroad Company, I. C. C. No. 4642-B;

(c) Tariff of Texas and New Orleans Railroad Company, I. C. C. No. 4642-B, Supplement No. 2;

(d) Tariff of Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, I. C. C. No. 10, and Supplement No. 11 thereto.

(e) Letter of September 25, 1926, to the Secretary of the Interstate Commerce Commission from Morgans Louisiana & Texas Railroad Company, and Celotex Company;

(f) Letter from the Secretary of the Interstate Commerce Commission, dated September 28, 1926, in reply thereto;

(g) Letter of Secretary of the Interstate Commerce Commission dated October 8, 1926.

850 (h) Secretary's reply thereto, dated October 13, 1926, and

(i) Tariffs of defendant railroad companies effective September 3, 1935, cancelling the allowance.

21. In No. 317, on motion for an interlocutory injunction, the following document was received and should be printed:

(a) Gulf, Mobile & Northern Tariff Supplement No. 28 to I. C. C. No. 1168.

22. In No. 331, on motion for interlocutory injunction, the following documents were introduced and received in evidence, and should be printed:

(a) Tariffs of Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company providing for terminal allowances to the Standard Oil Company at North Baton Rouge, La.:

(b) Tariffs of defendants Louisiana & Arkansas Railway and New Orleans, Texas & Mexico Railway Companies, and

(c) Cancellation tariff filed by Yazoo & Mississippi Valley Railroad Company and other carriers to become effective on July 15, 1935.

23. Order of Court filed December 17, 1935, assigning Nos. 314, 315, 317, and 331 for hearing on the merits on January 30, 1936.

24. Order of consolidation in Nos. 314, 315, 317, and 331, filed January 30, 1936.

25. Stipulation as to record dated January 30, 1936, and filed the same day in No. 314.

26. Motion to change name of plaintiff in No. 315, filed January 30, 1936.

27. Opinion, filed February 25, 1937.

28. Final decree entered April 28, 1937.

29. Findings of fact and conclusions of law entered April 28, 1937.

851 30. Record of testimony and exhibits before the Interstate Commerce Commission, in original form as introduced in evidence before the Court as Exhibit No. —, consisting of printed volumes 1 to 12, inclusive, of the oral testimony, and volumes 1 to 5, inclusive, of exhibits.

31. Narrative statement of evidence before the Interstate Commerce Commission, to be supplied later.

32. Stipulation re transcript of record and order of Court thereon, to be supplied later.

33. Stipulation as to Interstate Commerce Commission record before three-judge court.

34. Transcript of proceeding on final hearing.

35. Notice of appeals, with acknowledgments of service.

36. Petitions for appeals.

37. Assignments of error.
38. Statement as to jurisdiction.
39. Notice pursuant to Rule 12 of Supreme Court, and acknowledgment thereof.
40. Notice to the Attorney General of the State of Louisiana.
41. Order allowing appeals.
42. Citations on appeals.
43. Order of ——, 1937, extending time for filing the record and docketing appeals in the Supreme Court.
44. Summons and Severance in Nos. 314 and 331 addressed to Yazoo & Mississippi Valley Railroad Company and Illinois Central Railroad Company.
45. Summons and Severance in No. 315 addressed to Missouri Pacific Railroad Company (Baldwin and Thompson, Trustees).
46. Summons and Severance in No. 315 addressed to the Texas and Pacific Railway Company.

852 47. Summons and Severance in No. 315 addressed to the Texas and New Orleans Railroad Company.

48. Summons and Severance in No. 315 addressed to the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.
49. Summons and Severance in No. 317 addressed to the Gulf, Mobile & Northern Railroad Company.
50. Summons and Severance in No. 331 addressed to the Louisiana & Arkansas Railway Company.
51. Summons and Severance in No. 331 addressed to the New Orleans, Texas & Mexico Railway Company.
52. This praecipe of transcript of record and acknowledgment thereof.
53. Clerk's certificate.

Dated ——, 1937.

RENE A. VIOSCA,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel, Interstate Commerce Commission.

Copy of praecipe acknowledged this — day of ——, 1937.

JOHN S. BURCHMORE,
Counsel for appellees.

853 [Clerk's certificate to foregoing transcript omitted in printing.]

1 In United States District Court for the Southern District of Texas

In Equity No. 690 (Houston Division)

HUMBLE OIL & REFINING COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 691 (Houston Division)

MAGNOLIA PETROLEUM COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 692 (Houston Division)

THE TEXAS COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 693 (Houston Division)

GULF REFINING COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 718 (Houston Division)

THE TEXAS COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

Praecipe for transcript of record

Filed August 7, 1937

To the CLERK OF THE ABOVE-ENTITLED COURT:

2 You will please prepare a transcript of the record in the above-entitled causes to be transmitted to the Supreme Court of the United States pursuant to the appeals of said Court heretofore taken, and incorporate in said transcript the following:

1. Bills of complaint in Nos. 690, 691, 692, 693, and 718, and all exhibits filed with and as part of said bill of complaint in each case.

2. Orders in Nos. 690 and 691, dated August 8, 1935, assigning cases for hearing on application for an interlocutory injunction at New Orleans on August 19, 1935.

3. Orders in Nos. 692, 693, dated August 13, 1935, setting cases for hearing on applications for preliminary injunctions at New Orleans on August 19, 1935.

4. Order entered in No. 718, dated February 26, 1936, calling for assembly of a three-judge court.

5. Order dated December 18, 1935, assigning Nos. 690, 691, 692, and 693 for hearing on the merits at New Orleans, January 30, 1936.

6. Order granting interlocutory injunction in No. 718, and consolidating cause for hearing with Nos. 690, 691, 692, and 693, dated March 3, 1936.

7. Answer of the United States to each of said bills of complaint in Nos. 690, 691, 692, 693, and 718.

8. Intervention of Interstate Commerce Commission in Nos. 690, 691, 692, and 693.

9. Answer of Interstate Commerce Commission in Nos. 690, 691, 692, 693, and 718.

10. Orders filed September 13, 1935, in Nos. 690, 692, and 693 extending time for defendant railroads to plead or answer.

11. Order dated September 9, 1935, in No. 691, extending to 30 days time for defendant railroads to answer bill of complaint.

3 12. Answer of Texas and New Orleans Railroad Company to bills of complaint, in Nos. 690, 691, 692, 693, and 718 filed on September 25, 1935, September 25, 1935, September 25, 1935, September 25, 1935, and April 18, 1936, respectively.

13. Answer of Missouri Pacific Railroad Company and Beaumont, Sour Lake & Western Railway Company to bill of complaint in No. 690, filed September 28, 1935.

14. Answer of Kansas City Southern Railway Company to bill of complaint in No. 691, filed September 26, 1935.

15. Answer of Gulf, Colorado & Santa Fe Railway Company to bill of complaint in No. 692, filed September 27, 1935.

16. Answer of Missouri-Kansas-Texas Railroad Company of Texas to bill of complaint in No. 692, filed September 25, 1935.

17. Answer of Burlington-Rock Island Railroad Company to bill of complaint in No. 692, filed September 25, 1935.

18. Answer of defendants, Missouri Pacific Railroad Company, International-Great Northern Railway Company, Beaumont, Sour Lake & Western Railway Company, and St. Louis, Brownsville and Mexico Railway Company, to bill of complaint in No. 692, filed September 28, 1935.

19. Answer of Kansas City Southern Railway Company to bill of complaint in No. 693, filed September 26, 1935.

20. Answer of Kansas City Southern Railway Company to bill of complaint in No. 718, filed March 4, 1936.

21. Stipulation and waiver of notice, in No. 718, filed February 25, 1936.

22. Interlocutory injunctions, filed August 19, 1935, in Nos. 690, 691, 692, and 693.

23. The following documents introduced in Nos. 690, 691, 692, and 693 on application for interlocutory injunction:

4 (a) Texas and New Orleans Tariff I. C. C. No. Tex. 121 and supplements thereto; (b) Beaumont, Sour Lake & Western Tariff I. C. C. No. 31 and Supplement No. 1 thereto; (c) Texas and New Orleans Tariff I. C. C. No. Tex. 123 and Supplement No. 1 thereto; (d) Texarkana & Fort Smith Tariff I. C. C. No. 176 and Supplement No. 2 thereto; (e) Texarkana & Fort Smith Tariff I. C. C. No. 158, and No. 178, and Supplements Nos. 1 and 2 thereto; (f) Texas and New Orleans Railroad Company Tariff I. C. C. Nos. 119 and 270, and (g) Texas and New Orleans Railroad Terminal switching Tariff No. 773, I. C. C. No. 1465.

24. Order of court consolidating cases Nos. 690, 691, 692, and 693, filed January 30, 1936.

25. Opinion of court in all cases, dated February 24, 1937.

26. Final decree in all cases, dated May 1, 1937.

27. Findings of fact and conclusions of law entered May 1, 1937, in all cases.

29. Evidence offered my plaintiffs in Nos. 690, 691, 692, and 693 at date of final hearing, January 30, 1936: (a) Certified copies of answer of Missouri Pacific Lines; Texas and New Orleans Railroad Company, Gulf, Colorado & Santa Fe Railway Company, Louisiana & Arkansas Railway Company, and The Texas and Pacific Railway Company to the Commission's questionnaire of January 14, 1932, in Ex Parte 104; (b) Twelve printed volumes of testimony; (c) Five printed volumes of exhibits, and (d) Copies of return and supplemental return of the Kansas City Southern Railway Company and Texas & Fort Smith Railway Company to above-mentioned questionnaire, certified by the Secretary of the Interstate Commerce Commission.

5 30. Stipulation re transcript of the record filed January 30, 1936, in Nos. 690, 691, 692, and 693.

31. Evidence offered by the United States and the Interstate Commerce Commission in Nos. 690, 691, 692, and 693, as follows: (a) Illinois Central and Yazoo & Mississippi Valley Railroad Company Tariffs, I. C. C. No. 4519 and I. C. C. No. 6700; (b) Louisiana Railway & Navigation Company Tariffs, I. C. C. No. A–578, and A–944, and Supplement No. 30; (c) Louisiana & Arkansas Railway Company Tariffs I. C. C. No. 1347, and 1382, including supplements; (d) New Orleans, Texas & Mexico Railway Company I. C. C. Tariff A–6, A–874 and supplement, and A–1017 and supplement, and (e) Returns to questionnaire filed by the Missouri Pacific Lines; Texas and New Orleans; Gulf, Colorado & Santa Fe Railway Company; Texas and Pacific Railway Company, Louisiana & Arkansas Railway Company; Kansas City Southern Railway Company, and Texarkana & Fort Smith Railway Company.

32. Record of testimony and exhibits before the Interstate Commerce Commission, in original form as introduced in evidence before the court as Exhibit No. —, consisting of printed volumes 1 to 12,

inclusive, of the oral testimony and volumes 1 to 5, inclusive, of exhibits.

33. Narrative statement of evidence before the Interstate Commerce Commission, to be supplied later.

34. Stipulation re transcript of record and order of court thereon, to be supplied later.

35. Notice of appeals, with acknowledgments of service.

36. Petitions for appeals.

37. Assignments of error.

6 38. Statement as to jurisdiction.

39. Notice pursuant to Rule 12 of Supreme Court, and acknowledgment thereof.

40. Notice to the Attorney General of the State of Texas.

41. Order allowing appeals.

42. Citations on appeals.

43. Order of July 23, 1937, extending time for filing the record and docketing appeals in the Supreme Court.

44. Summons and Severance in Nos. 690, 691, 692, 693, and 718, addressed to Texas and New Orleans Railroad Company.

45. Summons and Severance in No. 692, addressed to International-Great Northern Railway Company; Missouri Pacific Railroad Company; St. Louis, Brownsville & Mexico Railway Company; Beaumont, Sour Lake & Western Railway Company; Burlington-Rock Island Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Missouri-Kansas-Texas Railroad Company of Texas, and Atchison, Topeka & Santa Fe Railway Company.

46. Summons and Severance in No. 690, addressed to Missouri Pacific Railroad Company and the Beaumont, Sour Lake & Western Railway Company.

47. Summons and Severance in Nos. 691, 693, and 718 addressed to Kansas City Southern Railway Company.

48. This praecipe of transcript of record and acknowledgment thereof.

49. Clerk's certificate.

Dated August 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.

7 ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel, Interstate Commerce Commission.

Copy of praecipe acknowledged this 30th day of July 1937.

JOHN S. BURCHMORE,
Counsel for appellees.

[File Endorsement omitted.]

8 [Caption omitted.]

9 [File endorsement omitted.]

10 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 690

HUMBLE OIL & REFINING COMPANY, PLAINTIFF

vs.

UNITED STATES OF AMERICA; TEXAS AND NEW ORLEANS RAILROAD COMPANY; MISSOURI PACIFIC RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES), DEFENDANTS

Bill of complaint

Filed August 8, 1935

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas, Houston Division:

Humble Oil & Refining Company, a corporation, presents this petition, or bill of complaint, against the United States of America, Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company (L. W. Baldwin and Guy A Thompson, Trustees), and The Beaumont, Sour Lake & Western Railway Com-
11 pany (L. W. Baldwin and Guy A. Thompson, Trustees), and thereupon plaintiff respectfully states:

I

Plaintiff, Humble Oil & Refining Company, is a corporation organized and existing under the laws of the State of Texas and having its principal office and principal operating office at Houston, Texas, in the Southern District of Texas, Houston Division. Plaintiff is engaged in the refining of petroleum and the production of various products therefrom, with refinery and plant at Baytown, Texas, from which it distributes its products by shipment in carload lots, by railroad, in interstate commerce, to various states of the United States, other than Texas. In the conduct of its business, plaintiff receives carload shipments of various commodities, moving in interstate commerce, by railroad, to its said plant at Baytown, Texas, from points of origin outside of the State of Texas.

II

Defendants, Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company, and The Beaumont, Sour Lake & Western Railway Company, hereinafter sometimes for convenience referred to collectively as defendant carriers, are corporations organized and existing under the laws of various states of the United States, all of whom are qualified to do business and are doing business in the State

of Texas and have lines of railroad within, or extending into, the said Southern District of Texas, Houston Division. The properties of the said Missouri Pacific Railroad Company are now in the
12 custody of L. W. Baldwin and Guy A. Thompson, Trustees appointed by the District Court of the United States for the Eastern District of Missouri, Eastern Division.

The properties of the said The Beaumont, Sour Lake & Western Railway Company are now likewise in the custody of L. W. Baldwin and Guy A. Thompson, Trustees.

Each of said defendant carriers is engaged in the transportation of property by railroad in interstate commerce, and, as such, is subject to the provisions of an Act of Congress entitled "An Act to Regulate Commerce," and approved February 4, 1887, and all acts supplemental thereto or amendatory thereof, being the Interstate Commerce Act.

Said carriers receive at points of origin on their lines of railroad, as well as from connecting carriers, carload freight for transportation to and delivery at plaintiff's aforesaid refinery at Baytown, Texas, and in like manner receive freight from plaintiff at its said plant for transportation to destinations on their own lines or the lines of the other carriers, all in interstate commerce.

Said defendant, Missouri Pacific Railroad Company, does not serve, or reach with its rails, the aforesaid refinery of plaintiff. Said defendant, The Beaumont, Sour Lake & Western Railway Company, which is understood to be a subsidiary of said defendant, Missouri Pacific Railroad Company, serves, and its rails reach, plaintiff's aforesaid refinery. Defendant, The Beaumont, Sour Lake & Western Railway Company is not named as respondent in the report and order of the Interstate Commerce Commission, which is hereinafter referred to and described.

13 III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913, to enjoin, set aside, annul, suspend, and restrain the enforcement, operation, and execution of an order of the Interstate Commerce Commission, entered July 8, 1935, in its docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services; and to enjoin and restrain the said defendant carriers from the cancellation of tariffs filed with the Interstate Commerce Commission authorizing and providing for an allowance of 90 cents per loaded car for services and facilities connected with the transportation of property and for the furnishing of instrumentalities used in such transportation at plaintiff's aforesaid plant at Baytown, Texas, alleged to be required by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel or in any manner depart from the allowances for transportation service set forth in tariffs on file with the Interstate Commerce

Commission for services and facilities in transportation at plaintiff's aforesaid plant at Baytown, Texas, or to make any effort to modify or change said tariffs in order to comply with the requirements of the said order, as more fully hereinafter set forth, and to set aside and hold for naught any and all acts of said defendant carriers performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated July 8, 1935.

14

IV

Said defendant carriers by lawful tariffs, on file with the Interstate Commerce Commission, have published and joined with other carriers in publishing rates and charges for the transportation of property to and from the spurs, sidings, tracks, and loading and unloading points at the plant of the plaintiff at Baytown, Texas, which rates and charges so filed and established, contemplate the placement of the empty cars at the place of loading and the removal of the loaded cars therefrom and transportation over the lines of the defendants and their connections to consignees at final destination of said shipments, and also, in like manner, contemplate the placing of the inbound loaded cars at the final point of unloading in the plant of the plaintiff and the removal of the empty cars therefrom.

Plaintiff demanded of said defendant carriers that they perform their duty under the law as set forth in paragraph IX hereof, by transferring empty and loaded cars to and from loading and unloading points in plaintiff's said plant. The defendant railroad companies, in accordance with the requirements of the law, and performing their duty under the law, elected to have plaintiff perform the terminal services at its said plant. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between interchange tracks and points of loading and unloading in its said plant.

15

V

Texas and New Orleans Railroad Company now has, and for several years has had, on file with the Interstate Commerce Commission, in accordance with the provisions of Section 6 of the aforesaid Interstate Commerce Act, its local freight tariff No. 884-B, I. C. C. No. Tex. 121, which requires and authorizes the payment to the plaintiff of 90 cents per car as compensation for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's plant at Baytown, Texas, and track connection with the Texas and New Orleans Railroad. Said tariff was issued effective March 19, 1930, and succeeded previous schedules, under the provisions of which said allowance became effective on interstate shipments June 17, 1927.

Said defendant The Beaumont, Sour Lake & Western Railway Company issued and filed with the Interstate Commerce Commis-

sion, in accordance with said provisions of Section 6 of the aforesaid Act to Regulate Commerce, its terminal switching tariff No. 1457-B, I. C. C. No. 31, effective March 22, 1930, authorizing and requiring the payment to the plaintiff of 90 cents per car for services performed and facilities furnished in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks of the plaintiff in its said plant and track connections of said carrier at Baytown, Texas, and stating that this allowance included the movement and placement of a loaded car for unloading and the return of the empty car, or the movement
16 and placement of an empty car for loading and return of same loaded. Said allowance became effective in 1927 as to interstate traffic.

The amount of such allowances is less than the cost to the plaintiff for performing the aforesaid service, and is less than it would cost the said defendant railroad carriers, or either of them, to perform the service with their own engines and employees. Such allowances, therefore, are not in excess of just and reasonable allowances and are lawful under the provisions of paragraph 13 of Section 15 of the said Act to Regulate Commerce.

VI

On July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as Ex Parte 104, and assigned the same for hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the transportation services performed at the line-haul rates and the value of such
17 services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a hearing at Galveston, Texas,

May 16–19, 1932. At these various hearings witnesses appeared, gave oral testimony and filed documentary evidence purporting to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties, including the plaintiff.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff and others, oral argument was had and thereupon the Commission issued its report and order, dated May 14, 1935, in which the Commission set forth its legal conclusions with respect to the general situation presented; various supplemental reports thereto were issued on said date; and further supplemental reports were later issued, among others, the Thirteenth Supplemental Report dated July 8, 1935, in which the Commission set forth its report and requirements with reference to the allowance paid to the plaintiff, as will more particularly hereinafter appear.

Said original report of the Commission was served in mimeographed form and later reported in Volume 209 of the Commission's official reports beginning at page 11. A true copy thereof is
18 attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length.

A true copy of said Thirteenth Supplemental Report of the Commission and said order thereon of July 8, 1935, is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

VII

The evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants, and their connections, in the transportation of carload freight at, to, and from Baytown, Texas, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an Examiner, during sessions at Galveston, Texas, May 16 to 19, 1932.

VIII

In alleged conformity with said order of July 8, 1935, the railroad defendants filed their several tariffs as follows:

The Beaumont, Sour Lake & Western Railway Company, Supplement 1 to its aforesaid tariff, No. 1457–B, I. C. C. No. 31, effective August 26, 1935, cancelling the aforesaid terminal allowance of 90 cents per car to plaintiff, and the said supplement states on its face that it is filed in compliance with the aforesaid Thirteenth Supplemental Report of the Commission.

Texas and New Orleans Railroad Company Supplement 1
19 to its I. C. C. No. 121, effective August 26, 1935, cancelling said terminal allowance of 90 cents per car to plaintiff, as defined in the aforesaid Thirteenth Supplemental Report, Appendix B hereto.

IX

Section 1 of the Interstate Commerce Act, U. S. Code, title 49, Sec. 1, 41 Stat. L., 474, provides:

"(1) That the provisions of this Act shall apply to common carriers engaged in—

"(a) The transportation of passengers or property wholly by railroad, * * *.

"(2) The provisions of this Act shall also apply to such transportation of passengers and property * * * but only in so far as such transportation * * * takes place within the United States, * * *.

"(3) The term 'common carrier' as used in this Act shall include * * * all persons, natural or artificial, engaged in such transportation * * * as aforesaid as common carriers for hire. * * * The term 'railroad' as used in this Act shall include all * * * the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of * * * property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities, and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. * * *.

"(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of * * * property to provide and furnish such transportation upon reasonable request therefor, * * *."

Section 6 provides:

"(1) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, * * * when a through route and joint rate have been established. * * * The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property * * * will be carried, * * * and shall also state separately all terminal charges, * * * and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee.

* * * The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act. * * *

"(7) No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of * * * property, as defined in this Act, unless the rates, * * * and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of * * * property, or for any service in connection therewith, between the points named in such tariffs than the rates, * * * and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, * * * and charges so specified, nor ex-
21 tend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15, paragraph 13, provides:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Act approved February 19, 1903, as amended June 29, 1906 (U. S. Code, title 49, Sec. 41, 32 Stat. L. 847), provides. Section 1:

"The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, * * * and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce, and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. * * * Whenever any carrier files with the Interstate Commerce Com-
22 mission or publishes a particular rate under the provisions of the Act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against

such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act."

X

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of July 8, 1935, ostensibly was issued.

XI

Inasmuch as the order of July 8, 1935, in alleged conformity with which the tariffs referred to in paragraph VIII hereof were filed, cancelling the terminal allowances to the plaintiff is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of will not grant full measure of relief to this plaintiff, unless all action which has been taken by the individual railroad defendants be set aside and held for naught, thereby restoring and making effective the lawful terminal allowances in effect on July 7, 1935.

23

XII

The said order of July 8, 1935, as above set forth, is unlawful and void in the following respects:

(1) The Commission was without authority either in law or in fact, to make the said order.

(2) There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally;

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car
24 for load at, and removal of loaded car from point of loading, and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

(5) The evidence on which the order is based shows conclusively that the terminal allowances paid by the defendant railroad companies to plaintiff are for transportation services embraced within the services for which the defendant railroad companies publish, charge, and receive the rates named in their tariffs filed with the Interstate Commerce Commission; that the said terminal allowances are no more than just and reasonable and, being published in the tariffs of the defendant railroad companies, are just as binding upon the defendant railroad companies as are any rates named in their tariffs to be collected for the transportation of property by them in interstate commerce.

(6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant railroad companies in connection with the terminal allowances at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowances named in the tariffs of the defendant railroad companies is paragraph (7) of Section 6; and so long as the allowances are named in the tariffs of the defendants they must be paid. The record wholly fails to show any violation of Section 6, paragraph (7).

25

XIII

Further, plaintiff shows that prior to 1905 the question had arisen as to the Commission's power over allowances to shippers for services performed and facilities furnished by them for carriers subject to the Interstate Commerce Act. In its annual report to the Congress in 1905 the Commission said:

"Terminal roads, elevator charges, and private cars.

"There is an important class of cases in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like property. This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such preference may take the form of an excessive division to a terminal road owned by the shipper, the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one ship-

per to another. It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We should hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the service can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public, if provided by the shipper himself. We do think, however, that the commission
26 should be empowered in a case of this kind, to determine whether the allowance to the property owner is a just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Thereupon on June 29, 1906, 34 Statute 584, Section 1 of the Interstate Commerce Act was amended so that the term "railroad" should include—

"all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

The section was further amended so that the term "transportation" includes—

"all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration, icing, storing, and handling of property transported; and it shall be the duty of every carrier, subject to the provisions of this Act, to provide and furnish such transportation upon reasonable request therefor."

Section 6 was amended so as to require the schedules of rates filed by carriers to "state separately all terminal charges, storage charges, icing charges and all other charges which the Commission may require, all privileges or facilities granted or allowed." Section 6 was further amended by the addition of the following to paragraph (7): "Nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in
27 the transportation of passengers or property, except such as are specified in such tariffs.

Section 15 was amended by the addition of the following paragraph:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission many, after hearing on a complaint, or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Commission has no power to prohibit defendant railroad companies from employing plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad companies to plaintiff for service and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of July 8, 1935, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

28

XIV

Plaintiff has handled, and will continue to handle for the defendant railroad companies, loaded and empty cars on which the terminal allowance payable to the plaintiff in accordance with the tariffs of the railroad defendants amounts in the aggregate to not less than Six Thousand Dollars ($6,000) per annum on interstate transportation. Unless the order of the Commission be set aside and the defendant railroad companies be required to withdraw their canceling tariffs, plaintiff will be compelled to perform the service of transporting from the interchange track the empty car to and the loaded car from the point of loading, and the inbound loaded car, from the interchange track to and the empty car from the point of unloading to interchange tracks with the defendant railroad companies, for which transportation plaintiff will be compelled to assume an expense in excess of 90 cents per car more than if said terminal allowances were not cancelled, amounting in the aggregate excess to more than Six Thousand Dollars ($6,000) per annum, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiff is remediless in the premises at law, and relievable only in a court of equity, plaintiff prays that a preliminary or interlocutory order or injunction be entered, restraining and suspending the enforcement, operation, and execution of the said order of the Interstate Commerce Commission of July 8, 1935, until final determination of this cause, and

that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the enforcement, operation, and execution of said order.

29 Plaintiff further prays that a preliminary or interlocutory order or injunction be entered, requiring the railroad defendants, and each of them, to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission and suspending the cancellation of the terminal allowances now being paid plaintiff until final determination of this cause and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, anulling, and setting aside the said tariffs, and requiring the said defendants to file new tariffs restoring the terminal allowances in effect on July 7, 1935, on interstate traffic handled by the plaintiff at said plant in Baytown, Texas, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of July 8, 1935, and to restore the status quo of July 7, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad defendants, and each of them, to vacate, annul, and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of July 7, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiff further prays, that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the

30 defendants herein named, in the manner provided in the Acts of Congress, and plaintiff will ever pray.

Respectfully submitted.

LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
1522 First National Bank Bldg., Chicago, Ill.,
Solicitors for Plaintiff.

R. E. SEAGLER,
Humble Bldg., Houston, Texas,
Of Counsel.

[*Duly sworn to by C. H. McNair; jurat omitted in printing.*]

31 *Appendix A*

[Omitted. Printed side page. 22 ante.]

100 *Appendix B to complaint*

Interstate Commerce Commission

HUMBLE OIL & REFINING COMPANY TERMINAL ALLOWANCE

EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Submitted October 17, 1934—Decided July 8, 1935

Service performed by industrial locomotives beyond the points of interchange now in use found not to be a service for which the carriers are compensated in their interstate line-haul rates. Payment of an allowance, therefore, found unlawful.

Same appearances as in the original report.

THIRTEENTH SUPPLEMENTAL REPORT OF THE COMMISSION

Division 6, Commissioners McNanamy, Lee, and Miller

By Division 6:

In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced which we indicated would be followed in considering the propriety and lawfulness of allowances paid to individual industries heard on this record for the performance of spotting service at their plants, or the performance of such service by respondent car-
101 riers in lieu of payment. This supplemental report deals with the propriety and lawfulness of allowances paid by the Texas and New Orleans Railroad Company and the Missouri Pacific Railroad Company, hereinafter referred to as the T. & N. O. and the Missouri Pacific, respectively, to the Humble Oil & Refining Company, hereinafter referred to as the Humble company, for the movement of cars over tracks within its oil refinery at Baytown, Texas.

Construction of this refinery began in 1919, and extended over three or four years. The refining plant is served from numerous racks, where crude and refined oil and oil products are unloaded from or loaded into tank cars, and contains warehouse buildings for the handling of manufactured petroleum products shipped in barrels or packages, and shop buildings for the maintenance of the plant. Most of the buildings and tank-car racks are located in the eastern and southeastern portions of the industrial property, which will hereinafter be termed the main refinery area. The main office building is

located at the south end thereof. The entire plant contains approximately eight miles of standard-gage trackage consisting of between 30 and 40 individual tracks, most of which are located within and serve the main refinery area. The average carload traffic to and from the Humble company is in the neighborhood of 32,000 cars per year.

Prior to May 1, 1926, this plant was reached only by the Dayton-Goose Creek Railway Company. That railroad was owned almost entirely by the then president of the Humble company, who on the above date sold it to the T. & N. O. The part of the Missouri Pacific which serves this plant is an electric line formerly the Houston-North Shore Railroad, which made a connection with the plant in 1927.

102 During the period of refinery construction, the condition of the industrial tracks would not permit the operation of any except very light-weight locomotives such as those then owned by the Humble company. After the tracks were improved and ballasted two heavier locomotives weighting 50 and 65 tons, respectively, were acquired, only one of which is operated at a time. Industrial locomotives have always performed the switching service over the Humble company's tracks.

The interchange tracks of the T. & N. O. used for the delivery and receipt of cars are located on property of that carrier at the junction of that carrier's tracks with the industrial tracks, near the southeastern corner of the main refinery area. The Missouri Pacific enters the Humble company's property near its northwest corner where the right-of-way and tracks of that carrier diverge from its main line and extend eastward to end at a point about 5,000 feet from its western boundary. Two sidings owned by the Missouri Pacific, each about 3,400 feet in length, are located on that carrier's right-of-way at this point, which is about one mile northwest of the main refinery area. These sidings are used as the principal points of interchange between the Missouri Pacific and the Humble company, and connect with industrial track owned by the latter. The Missouri Pacific main line parallels the west and south sides of the Humble company property to the southeast corner where it parallels the southern portion of the main refinery area. A secondary interchange tracks with a capacity of only five cars is located near the southeast corner of the main refinery area, where the Missouri Pacific main line extends eastward from the Humble company's prop-

103 erty. This track, used only for the interchange of merchandise cars, is about 8,000 feet from the principal interchange yard.

No request for an allowance was made by the Humble company during the time it was served by the Dayton-Goose Creek. After the sale of that railroad to the T. & N. O. an allowance was requested of the latter. Various other plants were then receiving allowances, and after correspondence and discussion between the officials of the Humble company and the T. & N. O. the latter agreed to grant an

allowance. A cost study made in November, 1926, disclosed the cost of spotting to be 95 cents per loaded car. To conform in amount to the allowances which had become generally effective in Texas, an allowance of 90 cents per loaded car was granted by the T. & N. O. effective July 17, 1927. See Magnolia Petroleum Company Terminal Allowance, 209 I. C. C. 93. When the Missouri Pacific connected with the plant in 1927, in order to meet the competition of the T. & N. O., it granted an allowance in the same amount. It does not appear from the record whether the Missouri Pacific was ever given the option of performing the service instead of paying the allowance. However, that carrier is precluded from performing this service with its electric locomotives as the use of cranes and loading devices within the refinery prevents the installation of trolley wires.

There are 42 locations within the refinery where cars are spotted for loading and unloading, and the service for which the allowance is paid consists of moving loaded and empty cars between the interchange tracks previously described on those points. The spotting locations have a track capacity of from 1 to 50 cars. The
104 one having the greatest capacity is at the crude oil unloading rack which is 6,842 feet and 10,338 feet from the Missouri Pacific and T. & N. O. interchange tracks, respectively. The distances from the principal Missouri Pacific interchange yard to these locations range from 2,081 to 15,032 feet. From the interchange yard of the T. & N. O. to the locations the distances range from 4,649 to 11,712 feet. The industrial operations require that some of the spotting locations be switched several times daily during times of normal business. There are six spotting locations at the Humble company's docks located about one mile south of the main refinery area. The industrial track which connects the refinery and the docks is used extensively by the industrial locomotives in performing intraplant service between those points. The record is conclusive that beyond the present points of interchange no service could be performed by the locomotives of the Missouri Pacific and T. & N. O. at their convenience, as it would seriously interfere with the intraplant switching between the refinery and the docks. It is likewise conclusive that any service performed by respondent carriers beyond those points is a plant service which is necessarily performed at the convenience of the Humble company, and under its direction and control. Under such circumstances, as stated in the original report, the obligation of a carrier under its line-haul rates extends no farther than the delivery and receipt of carload freight upon reasonably convenient interchange tracks. When carriers by their tariffs extend their service beyond their legal obligation as common carriers, as, for example, beyond a delivery equivalent to team-track delivery, we have ordinarily found that such extra service must be paid for by the shipper in order to avoid preference and
105 prejudice. Propriety of Operating Practices—New York Warehousing, 198 I. C. C. 134.

We find that the interchange tracks at this plant are reasonably convenient points for the delivery and receipt of interstate shipments of carload freight; that the Humble company performs no service beyond such points of interchange for which the T. & N. O. and Missouri Pacific are compensated in their interstate line-haul rates; and that by the payment of an allowance those respondent carriers provide the means by which the Humble company enjoys a preferential service not accorded to shippers generally and refund or remit a portion of the rates or charges collected or received as compensation for the interstate transportation of property, in violation of section 6 (7) of the Interstate Commerce Act.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 6, held at its office in Washington, D. C., on the 8th day of July, A. D. 1935.

HUMBLE OIL & REFINING COMPANY TERMINAL ALLOWANCE

EX PARTE NO. 104—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

Part II—Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by the Texas and New Orleans Railroad Company and the Missouri Pacific Railroad Company to the Humble Oil & Refining Company
106 for performance by the latter of spotting service within its plant at Baytown, Texas, and the Commission having under date of May 14, 1935, made and filed a report, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Humble Oil & Refining Company, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the payment of said allowance the Texas and New Orleans Railroad Company and the Missouri Pacific Railroad Company violate the Interstate Commerce Act as set forth in the above-mentioned reports:

It is ordered, that the Texas and New Orleans Railroad Company and the Missouri Pacific Railroad Company be, and they are hereby notified and required to cease and desist on or before August 26, 1935, and thereafter to abstain from such unlawful practice.

By the Commission, Division 6.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

107 In United States District Court

No. 690. Equity

[Title omitted.]

Order convening three judge court

Filed Aug. 9, 1935

On consideration of the above entitled cause it is ordered that the application for a Preliminary Injunction herein, be heard in the Court room of the United States District Court at New Orleans, Louisiana, on Monday, the 19th day of August 1935 at 10:00 o'clock A. M., before a statutory Court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said Court to consist of Honorable Rufus E. Foster, Circuit Judge, and Honorable Wayne G. Borah and T. M. Kennerly, District Judges, which is hereby convened; and that the defendants be ordered then and there to show cause, if any they can, why the Preliminary Injunction prayed for should not issue.

Houston, Texas, August 8, 1935.

T. M. KENNERLY, *Judge.*

[File endorsement omitted.]

108 In United States District Court

Equity No. 690. Equity No. 691. Equity No. 692. Equity No. 693

[Titles omitted.]

Order of court setting cases for hearing on merits

Filed December 18, 1935

It is ordered by the Court that the above numbered and entitled causes be assigned for hearing on the merits before a Statutory Court of three Judges for Thursday, January 30th, 1936, at 10:30 o'clock A. M., at New Orleans, Louisiana.

It is further ordered that counsel for the respective parties be notified of the entry of this Order and of the date, time, and place of the hearing.

Houston, Texas, December 18, 1935.

T. M. KENNERLY,
United States District Judge.

[File endorsement omitted.]

109 In United States District Court

In Equity No. 690

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935

To the honorable the judges of said court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, Sec. 45a), I hereby enter the appearance of the Interstate Commerce Commission as a party defendant and of myself as its counsel, in the above entitled suit.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

[File endorsement omitted.]

110 In United States District Court

In Equity No. 690

[Title omitted.]

Answer of Interstate Commerce Commission

Filed at New Orleans, La., August 19, 1935

The Interstate Commerce Commission, intervening defendant in the above entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XIV, inclusive, of the bill of complaint the Commission admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph VI of the Bill of Complaint and the Thirteenth Supplemental Report dated July 8, 1935, referred to in said paragraph VI and the order dated July 8, 1935, referred to in paragraph III of the Bill of Complaint, copies of which respectively are attached to the Bill of Complaint as

Appendix A and Appendix B in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others of determining whether
111 certain practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein were, and that each of them was accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein, by the counsel for said parties; that at said hearing and subsequently both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein, and upon other interested parties, its said reports and orders; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of July 8,
112 1935, was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph XII of the bill of complaint, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, in making said order of July 8, 1935, it either acted arbitrarily or exceeded its authority, as alleged in paragraph XIII of the bill of complaint.

The Commission specifically denies that, unless said order of July 8, 1935, is set aside, plaintiff will suffer irreparable loss and injury, as alleged in paragraph XIV of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said original report of May 14, 1935, and in said Thirteenth Supplemental Report and Order of July 8, 1935, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain and prove, as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON, *Chief Counsel.*

[*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

113 [File endorsement omitted.]

114 In United States District Court

[Title omitted.]

Interlocutory injunction

Filed at New Orleans, La., August 19, 1935

The plaintiff having heretofore filed its Bill of Complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation, and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 8th day of July 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 26th day of August 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the court herein;

And the Honorable T. M. Kennerly, Judge of the District Court of the United States for the Southern District of Texas, pursuant to Section 47 of the United States Code, having called to his assistance, to hear and determine said application for said interlocutory injunction, two other judges, namely, Honorable Rufus E. Foster, United States Circuit Judge, and Honorable Wayne G. Borah, United States District Judge; and it appearing that five days' notice of

hearing by this court on such application for interlocutory injunction, to be held on Monday the 19th day of August 1935, was given to the above named respondents, to the Attorney General of the United States and to the Interstate Commerce Commission;

It further appearing from the Bill of Complaint that defendants Texas and New Orleans Railroad Company, Missouri Pacific
115 Railroad Company, and The Beaumont, Sour Lake & Western Railway Company have filed certain tariff schedules, to become effective August 26, 1935, in compliance with the aforesaid order of the Commission, whereby each of said defendants will cancel the allowance which has been paid plaintiff for many years last past as compensation for transportation services under paragraph (13) of Section 15 of the Interstate Commerce Act; and it appearing that the plaintiff in order to send and receive its shipments will be compelled to perform said transportation services without compensation after said tariffs are allowed to become effective on said date, to the irreparable damage of said petitioner; and that the effective date of such tariffs should be suspended pending the outcome of the matters in controversy in this proceeding:

And the court having jurisdiction of the parties hereto and of the subject matter and being fully advised in the premises, and upon hearing:

Now therefore, it is ordered, that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 8th day of July 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to petitioner, Humble Oil & Refining Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the court.

It is further ordered, that the operation of the aforesaid tariff schedules filed by defendants, Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company, and The Beaumont, Sour Lake & Western Railway Company to become effective August 26, 1935, cancelling the aforesaid allowance to plaintiff be, and each of them is, hereby suspended and set aside, pending the further order of this Court.

Plaintiff shall immediately execute and file a bond in the sum of five thousand ($5,000.00) Dollars, to be approved by one of the Judges of this Court, conditioned that plaintiff will pay to the defendants such sum as this Court may determine is proper if this
116 interlocutory injunction is dissolved.

August 19, 1935.

By the Court.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

[File endorsement omitted.]

117 In United States District Court

In Equity No. 690

[Title omitted.]

Answer of the United States of America

Filed September 9, 1935

United States of America, one of the above named defendants for answer to the Bill of Complaint filed herein against it says:

I

United States admits that the facts alleged in paragraphs numbered I, II, and III of the bill are true, except that it denies the statement in said paragraph III that the allowance therein mentioned is for services and facilities connected with the transportation of property or for the furnishing of instrumentalities used in such transportation within the meaning of the Interstate Commerce Act.

II

United States denies the allegations contained in paragraphs IV and V of the bill except that it admits that the defendant carriers have published and joined with other carriers in publishing and filing rates for the transportation of property to and from points on their lines, including plaintiff's plant; admits that plaintiff performs the movement of loaded and empty cars from interchange tracks of defendant carriers at the gates of plaintiff's plant to and from points of unloading and loading within said plant; and admits that the defendant carriers publish the tariffs described in said paragraph V, purporting to compensate plaintiff for performance of said movement of cars; but United States denies that said switching and movement of cars by plaintiff within its private grounds and plant constitutes transportation service within the meaning of the Interstate Commerce Act, denies that defendant carriers may perform said service for plaintiff without charge in addition to their line-haul rates and denies that said defendant carriers may pay any allowance out of said line-haul rates to plaintiff for performing

118 said switching and movement of cars; and United States alleges that said switching and movement of cars is a plant service, as found by the Interstate Commerce Commission in its report, which is attached as Appendix B to the Bill of Complaint, to which report reference is hereby made.

III

United States admits the truth of the allegations contained in paragraphs numbered VI, VII, VIII, and IX of the bill, except that it denies the suggestion alleged in said paragraph VII that the evidence heard by the Interstate Commerce Commission on May 16 to 19, 1932, constitutes all the evidence heard and considered by the Commission in connection with the plaintiff and its movement of cars within its plant at Baytown, Texas.

IV

Answering paragraph X of the bill, United States says that it has no knowledge as to whether, at the hearing in this case, plaintiff will tender a certified copy of the record before the Interstate Commerce Commission out of which its said order of July 8, 1935, was issued and therefore, neither admits nor denies said allegation.

V

United States denies each and every allegation contained in paragraphs XI and XII of the bill.

VI

United States denies the allegations contained in paragraph XIII of the bill, except that it admits that the annual report of the Interstate Commerce Commission of 1905 to Congress contained the language quoted in said paragraph; and admits further that the Interstate Commerce Act was amended in the particulars set forth in said paragraph XIII.

VII

United States denies the allegations contained in paragraph XIV of the bill and particularly denies that plaintiff will suffer irreparable loss or injury or any legal damage whatever if said order of the Commission is not enjoined and annulled.

Further answering the bill of complaint, United States particularly denies the allegation in the prayer thereof that plaintiff
119 is without remedy at law and is relievable only in a court of equity and alleges that plaintiff has a complete and adequate remedy at law as well as a remedy in equity.

VIII

Except as herein expressly admitted, United States denies each and every allegation contained in the bill of complaint and in the several paragraphs and subdivisions thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

ELMER B. COLLINS,
Special Assistant to the Attorney General.
JOHN DICKINSON,
Assistant Attorney General.
DOUGLAS W. MCGREGOR,
United States Attorney.

[*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]
[File endorsement omitted.]

120 In United States District Court

In Equity No. 690

[Title omitted.]

Stipulation

Filed September 13, 1935

In the above entitled and numbered cause it is stipulated by and between plaintiff and defendant Railroad Companies (and Trustees, where Trustees are defendants) that the time within which said Railroad defendants (or Trustees, if any) may plead or answer shall be and is hereby extended for a period of thirty days, but not to extend in any event thirty days beyond the 27th day of August 1935.

John S. Burchmore, Solicitors for Plaintiffs; Wm. E. Davis, H. H. Larimore, Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees), and The Beaumont Sour Lake & Western Ry. Co. (L. W. Baldwin and Guy A. Thompson, Trustees); J. H. Tallichet, Texas and New Orleans R. R. Co., Solicitors for Defendants.

[File endorsement omitted.]

121 In United States District Court

No. 690. In Equity

[Title omitted.]

Answer of defendant Texas and New Orleans Railroad Company to plaintiff's original bill of complaint

Filed September 25, 1935

Comes now Texas and New Orleans Railroad Company, one of the defendants herein, and for answer to plaintiff's original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of loading and unloading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill, bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances
122 made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, parts II, were and are no more than the cost to plaintiff of performing the described service and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, Part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

J. H. TALLICHET,

Solicitor for Texas and New Orleans Railroad Company, Defendant.

[File endorsement omitted.]

123 In United States District Court

In Equity No. 690

[Title omitted.]

Answer of Missouri Pacific Railroad Company et al.

Filed September 28, 1935

Come now the above named defendants, and each of them and for answer to plaintiff's original bill of complaint represent and show to the Court:

I

They admit the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said Bill.

II

They admit the allegations of Section IV of said Bill but with the qualification that they deny that it is their duty as common carriers to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant and allege that their said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of loading and unloading.

III

They represent to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, The United States of America in which these defendants are not necessary parties, and that they should not be required to admit or deny said allegations. If required to answer respecting the said Sections, they allege the facts to be that the allowances made by them and described in the reports of the Interstate Commerce Commission in Ex Parte 104, Part 2, were and are no more than the cost to plaintiff of per-
124 forming the described service and less than what it would have cost these defendants to perform the same; that when said allowances were published in the tariffs described in said bill, or any preceding tariffs, these defendants believed and yet believe that it was their duty as common carriers to perform the services for which said allowances were made and that there was, before the Interstate Commerce Commission in said Ex Parte 104, Part 2, no evidence or no substantial evidence to the contrary or to the effect that the duty aforesaid was that of plaintiff.

Premises considered, these defendants severally pray that the Court enter such decree herein as the facts may warrant and as equity may require.

H. H. LARIMORE,
R. H. KELLEY,
Solicitors for said Defendants.

[File endorsement omitted.]

125 In United States District Court

In Equity No. 690. In Equity No. 691. In Equity No. 692. In Equity No. 693

[Titles omitted.]

Order consolidating causes

Filed at New Orleans, January 30, 1936

Upon oral motion and pursuant to stipulation of counsel in open court, it is ordered that the trials of the above entitled four cases shall be consolidated and that they shall be heard and determined upon one record.

WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*
RUFUS E. FOSTER, *Circuit Judge.*

[File endorsement omitted.]

126 In United States District Court

In Equity No. 690. In Equity No. 691. In Equity No. 692. In Equity No. 693

[Titles omitted.]

Stipulation re transcript of the record

Filed at New Orleans, La., January 30, 1936

It is stipulated and agreed by and between the plaintiffs in the above entitled causes and the United States and Interstate Commerce Commission as respondents:

1. That the exhibits received in evidence by the Interstate Commerce Commission in the proceeding known as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, of which copies certified by the Secretary of the Interstate Commerce Commission are this day filed in evidence before the court, are all of the Exhibits offered before the

Interstate Commerce Commission which it is necessary for the court to have and consider in the determination of the issues raised in these causes:

2. That the several exhibits bearing the following numbers likewise received in evidence by the Commission in said proceeding and of which copies are not filed under the certificate of the Secretary are not necessary for the court to have before it in passing on the issues:

Numbers 2 (in part) 5, 6, 8, 10, 11, 13, 15, 17, 29, 34, 41, 44, 45, 48a, 49, 50 (in part), 52, 55, 57, 59, 60, 62X, 62Y, 62xx, 63,
127 64, 65, 66, 67, 69, 76, 77, 78, 85, 86, 87, 88, 89, 91, 95, 100, 102, 107, 108, 109, 110, 118, 126, 127, 140 (in part), 145, 150 (in part), 157, 159, 160, 163, 169, 173, 191, 192, 250, 252, 266, 273, A5X, A–11, and A–150.

3. That of the original exhibits received in evidence by the Commission bearing colors, only those numbered A–23–A–24, A–27, A–37, A–46, A–70, A–71, A–72, A–94½, A–99, A–103, A–107, A–136, A–159, C–11, C–59, C–61, C–71, C–97, C–111, C–126–C–147, C–153–C–156, C–158, and C–165, have been reproduced insofar as is necessary and practical in the colors shown on the original, by direction and agreement of counsel.

4. That the copies certified by the Secretary of the returns to the questionnaire issued by the Commission in this proceeding on January 14, 1932, by the Texas and New Orleans Railroad Company, Missouri Pacific Lines, Texas and Pacific Railway Company, Louisiana and Arkansas Railway Company, Gulf, Colorado and Santa Fe Railway Company, and the joint return of The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, are hereby stipulated by counsel as having been properly received and considered in evidence by the Commission and are the only copies of such returns to the questionnaire which it is necessary to be placed before this court in determining the causes herein.

5. That the twelve printed volumes of transcript and the certified exhibits as hereinabove described and referred to constitute the full record of evidence before the Interstate Commerce Commission, insofar as is necessary for the court to have the record before it in passing on the issues.

This the 30th day of January 1936.

LUTHER M. WALTER,
JOHN S. BURCHMORE,
Solicitors for above named Plaintiffs and each of them.
DANIEL W. KNOWLTON,
For the Interstate Commerce Commission.
ELMER B. COLLINS,
For the United States of America.

128 *Opinion*

Filed February 24, 1937

[Omitted. Printed side page 485 ante.]

136 In United States District Court

In Equity No. 690. In Equity No. 691. In Equity No. 692. In Equity No. 693. In Equity No. 718.

[Title omitted.]

Findings of fact and conclusions of law on consolidated record

Filed May 1, 1937

Findings of fact

The foregoing five cases having been heard and tried, by agreement of counsel, on one consolidated record, embracing the record before the Interstate Commerce Commission and other relevant evidence, upon due consideration the court enters the following findings of fact:

1. These are suits in equity to enjoin, restrain and set aside certain orders of the Interstate Commerce Commission requiring defendant railroad companies to cease, desist from and discontinue the payment to plaintiffs of allowances for performing certain terminal services hereinafter more fully set out and generally referred to as "spotting."

2. The original report of the Commission, on which the orders complained of are based, is reported as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, 209 I. C. C. 11. The supplemental reports on which the orders complained of are also based will be found in the printed reports of the Commission as follows: Humble Oil & Refining Co. Terminal Allowance, 209 I. C. C. 727. Magnolia Petroleum Company Terminal Allowance, 209 I. C. C. 93. The Texas Company Terminal Allowance at Houston, Tex., 209 I. C. C. 767. Gulf Refining Company Terminal Allowance, 209 I. C. C. 756. The Texas Company Terminal Allowances at Port Arthur, Texas, 213 I. C. C. 583.

137 3. Humble Oil & Refining Company, plaintiff in No. 690, owns and operates a large oil refinery at Baytown, Texas, which is served by the railroad defendants, Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees), and The Beaumont, Sour Lake & Western Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees). Tracks connect numerous locations for

loading and unloading cars within the refinery property with the tracks of the several railroad companies; and over these tracks within and adjacent to said refinery cars moving in interstate commerce are transported by said plaintiff and for which said plaintiff is made allowance of 90 cents per car under published tariffs of the said railroads. The order complained of was entered July 8, 1935, and required the railroads to cease and desist making such allowance.

4. Magnolia Petroleum Company, plaintiff in No. 691, owns and operates an oil refinery at Chaison, Texas, which is served by defendants The Kansas City Southern Railway Company and Texas and New Orleans Railroad Company. The railroad defendants have tracks adjacent to such refinery and there are tracks leading therefrom to the loading and unloading points within the refinery property, over which tracks cars moving in interstate commerce are transported by plaintiff and for which plaintiff is made and allowance of 90 cents per car under published tariffs of the said railroads. The order complained of required the railroads to cease and desist making such allowance and was entered May 14, 1935.

5. The Texas Company, plaintiff in No. 692, owns a plant at Houston, Texas, referred to as the Galena Signal Oil Plant, which is served by the Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees), the Gulf, Colorado and Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company of Texas, and the Burlington-Rock Island Railroad Company, but the Port Terminal Railroad at Houston, a voluntary association or joint facility organization of railroads, generally performs switching services for the railroads. Plaintiff, however, transports cars moving in interstate commerce over tracks between those of the railroads and the Terminal Company and the points within the plant where cars are loaded or unloaded and for which plaintiff is made an allowance of 90 cents per car under published tariffs of the said railroads. The order complained of was entered July 11, 1935, and required the railroads to cease and desist making such allowance.

138 6. Gulf Refining Company, plaintiff in No. 693, owns and operates a refinery at Port Arthur, Texas, which is served by the railroad defendants the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company. Over tracks leading from the points of loading or unloading of cars, plaintiff transports cars moving in interstate commerce, for which plaintiff is made an allowance of 90 cents per car under published tariffs of the said railroads. The order complained of was entered July 11, 1935, and required the railroads to cease and desist making such allowance.

7. The Texas Company, plaintiff in No. 718, is engaged in the refining, manufacture and sale of petroleum and its products and

operates three plants known as the Asphalt Plant at Port Neches, Texas, and the Island Plant and the Refinery Plant at Port Arthur, Texas. The Refinery Plant is served by defendants Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company, and the Asphalt Plant and Island Plant are served exclusively by the last named carrier. Over tracks connecting the points of loading and unloading with the tracks of the railroad companies, plaintiff transports cars moving in interstate commerce for which plaintiff is made allowances of 90 cents per car at the Island Plant and Refinery and $1.00 per car at the Asphalt Plant under published tariffs of the said railroads. The order complained of, entered January 15, 1936, directs the railroads to cease and desist making such allowances.

8. At each of the aforesaid plants of the several plaintiffs the terminal switching service is performed in connection with the receipt and delivery of carload freight under the provisions of published tariffs of the railroads serving said plants, which tariffs define the terminal switching service as consisting of the handling of cars between the points of interchange with the carriers and the points at which such cars are unloaded or the points at which such cars are loaded in the plants, and provide that the particular plaintiff named will perform such terminal switching service for account of the railroad company and that the industry will be allowed for such service the specific amounts per loaded car named in each of the several tariffs.

9. The defendant railroads in obedience to the said several orders of the Commission undertook to cancel and discontinue the allowances set forth in such tariffs and these suits followed.

10. Under the evidence, the transporting, switching and
139 spotting of cars, for which the plaintiffs herein are made an allowance under the tariffs, is a service which the railroads involved are required to perform, as transportation.

11. The carriers serving industries of plaintiffs have not provided in their published tariffs any separately published charges for such terminal switching services, to be exacted in addition to the published freight rates.

12. There is no evidence that the railroads serving these industries have been prohibited by any of the plaintiffs from performing such terminal service, or that there are physical conditions which prevent them from doing so, or that there are any abnormal conditions of any kind which would serve to relieve the railroads involved of the duty of performing "spotting" service at the industries of each of the plaintiffs.

13. Having the duty to perform the aforesaid service, the railroads involved contracted with the respective plaintiffs to perform it, and filed with the Commission their tariffs providing for such allowances.

14. In none of these cases was there any finding of the Commission that the allowance in question was or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial; nor was there any substantial evidence on which the Commission could have based such findings.

Conclusions of law

Upon the consolidated record in these cases and the foregoing findings of fact, the court enters the following conclusions of law:

1. The work in transporting, switching, and spotting cars, for which the plaintiffs herein were made an allowance under the tariffs of the railroads serving their industries, is a service which the railroads involved are required, under the law, to perform as a part of transportation.

2. The railroads having the duty to perform the service, properly and lawfully were entitled to contract with the respective plaintiffs to perform the service and to provide reasonable allowances therefor in their tariffs published and filed with the Interstate Commerce Commission.

3. While the Commission without doubt has the power to determine whether such allowances are reasonable or unreasonable in amount and whether they do or do not give the plaintiffs an
140 unlawful preference, or whether they unlawfully discriminate against others similarly situated, under the evidence here the Commission was without power wholly to prohibit such allowances.

4. To support a cease and desist order by the Commission, there must be the necessary jurisdictional findings of fact by the Commission that the rate or practice complained of was unreasonable, unjustly preferential, unduly discriminatory, or otherwise unlawful, or the order is void. No sufficient findings appear either in the orders themselves in the present cases or in the reports which are made a part of the orders.

5. The orders of the Commission in the present cases are beyond its statutory power and should be set aside.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

Entered May 1, 1937.
[File endorsement omitted.]

141 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 690

HUMBLE OIL & REFINING COMPANY, PLAINTIFF

vs.

UNITED STATES OF AMERICA; TEXAS AND NEW ORLEANS RAILROAD COMPANY; MISSOURI PACIFIC RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES), DEFENDANTS; INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

Filed May 1, 1937

The above entitled cause same on for final hearing upon petition for permanent injunction and having been heard by a court of three judges, organized pursuant to the statutes, and the argument and briefs of counsel for all parties having been fully heard and considered, and the court having concluded for the reasons set forth in its written opinion filed herein on February 24, 1937, that the relief prayed for should be granted:

It is therefore ordered, adjudged, and decreed that the enforcement operation and execution of the order of the Interstate Commerce Commission, entered July 8, 1935, and entitled Humble Oil & Refining Company Terminal Allowance, Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses Part II, Terminal Services, and directed against the Texas and New Orleans Railroad Company, the Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees), and The Beaumont, Sour Lake & Western Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees) respondents in said proceeding, are hereby permanently enjoined and said order is hereby set aside and annulled.

This 1st day of May 1937.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

142 [File endorsement omitted.]

143 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 692 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

To MISSOURI PACIFIC RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES):

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the orders of the Interstate Commerce Commission described in the petitions in the above-entitled cases, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decrees of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

144 Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12th day of June 1937.

H. H. LARIMORE,
Attorney for Missouri Pacific Railroad Company,
(L. W. Baldwin and Guy A. Thompson, Trustees).

[File endorsement omitted.]

145 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 692 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

To BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES):

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the orders of the Interstate Commerce Commission described in the petitions in the above-entitled cases, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decrees of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

146 Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12th day of June 1937.

H. H. LARIMORE,
Attorney for Beaumont, Sour Lake & Western Railway Company,
(*L. W. Baldwin and Guy A. Thompson, Trustees*).

[File endorsement omitted.]

147 [File endorsement omitted.]

148 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 691

MAGNOLIA PETROLEUM COMPANY, PLAINTIFF

vs.

UNITED STATES OF AMERICA; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; TEXAS AND NEW ORLEANS RAILROAD COMPANY, DEFENDANTS

Bill of complaint

Filed August 8, 1935

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas, Houston Division:

Magnolia Petroleum Company, a corporation, presents this its petition, or bill of complaint, against the United States of America, The Kansas City Southern Railway Company, and Texas and New Orleans Railroad Company; and thereupon plaintiff respectfully states:

149 I

Plaintiff, Magnolia Petroleum Company, is a corporation organized and existing under the laws of the State of Texas; and it owns and operates refineries at various points in the State of Texas, including a refinery at Chaison, Texas, in the Southern District of Texas, Houston Division, which is one of its principal operating offices. Plaintiff is engaged in the refining of petroleum and the production of various products therefrom which are distributed from its several refineries by shipment in carload lots, by railroad, in interstate commerce to various states of the United States. In the conduct of its business, plaintiff receives carload shipments of various commodities, moving in interstate commerce, to plaintiff's refinery at Chaison, Texas, from points of origin outside of the State of Texas.

II

Defendants, The Kansas City Southern Railway Company and Texas and New Orleans Railroad Company (hereinafter for brevity referred to as the defendant carriers, or as defendant railroad companies), are corporations, organized and existing under the laws of the States of Missouri and Texas, respectively.

Said defendant carriers are common carriers by railroad of property in interstate commerce and as such are subject to the Interstate

Commerce Act. Each of them owns and operates certain lines of railroad within the State of Texas and in said Southern District of Texas and receives at points of origin on its lines of railroad
150 as well as from connecting carriers, carload freight for transportation to and delivery at plaintiff's aforesaid refinery at Chaison, Texas, and in like manner receives freight from plaintiff at its said refinery for transportation to destination on its lines or the lines of other carriers, all in interstate commerce.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913, to enjoin, set aside, annul, suspend, and restrain the enforcement, operation, and execution of an order of the Interstate Commerce Commission, entered May 14, 1935, in its Docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, requiring the said defendant carriers to cancel tariffs on file with the Interstate Commerce Commission authorizing and providing an allowance of 90 cents per loaded car for services and facilities connected with the transportation of property and for the furnishing of instrumentalities used in such transportation at plaintiff's aforesaid plant in Chaison, Texas, alleged to be unlawful; and to set aside and hold for naught any and all acts of said defendant carriers performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated May 14, 1935.

The subject matter of the aforesaid order is transportation, and the charges therefor; and said transportation occurs or takes place in the Southern District of Texas, Houston, Division.

151 IV

Said defendant carriers by lawful tariffs, on file with the Interstate Commerce Commission, have published, and joined with other carriers in publishing, rates and charges for the transportation of property to and from the spurs, sidings, tracks, and loading and unloading points in the plant of the plaintiff at Chaison, Texas, which rates and charges, so filed and established, contemplate the placement of the empty car at the place of loading and the removal of the loaded car therefrom, and its transportation over the lines of the defendant and its connections to consignee at final destination of said shipment and also in like manner contemplate the placing of the inbound loaded car at the point of unloading in the plant of the plaintiff and the removal of the empty car therefrom.

Plaintiff demanded of said defendant carriers that they, and each of them, perform their duty under the law, as set forth in sections 1 and 15 of the Interstate Commerce Act, by transferring empty and loaded cars to and from loading and unloading points in plaintiff's

said refinery. Each of defendant railroad companies, in accordance with the requirements of the law, and in the performance of its duty under the law, elected to have plaintiff perform the terminal services at its said refinery. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between so-called interchange tracks and points of loading and unloading in plaintiff's said refinery.

Said defendant carrier, The Kansas City Southern Railway Company, on May 14, 1935, and for several years prior thereto
152 had on file with the Interstate Commerce Commission in accordance with the provisions of Section 6 of the Interstate Commerce Act, its tariff described as No. 2869-C I. C. C. No. 176, authorizing and requiring the payment to the plaintiff of 90 cents per loaded car as compensation for services performed and facilities furnished by plaintiff, in connection with transportation of carload traffic to and from loading and unloading points on appropriate spurs and sidings in plaintiff's refinery at Chaison, Texas. The said schedule as originally published by said defendant's predecessor The Texarkana and Fort Smith Railway Company and later adopted by said defendant, provided as follows: Terminal Switching Tariff, Port Arthur Route System Tariff No. 2860-C (Cancels P. A. R. No. 2860-B), Applicable at Chaison, Texas.

The Texarkana and Fort Smith Railway Company will pay to the Magnolia Petroleum Company an allowance of Ninety (90) Cents per car as compensation for service performed of switching carload of freight between loading and unloading tracks of the Magnolia Petroleum Company and Track Connections with the Texarkana and Fort Smith Railway Company at Chaison, Texas.

Such compensation will be in lieu of, and relieve the Texarkana and Fort Smith Railway Company of performing such service as provided in tariffs lawfully on file with the Interstate Commerce Commission or the Railroad Commission of Texas, requiring the placement for unloading and the handling for forwarding of car-
load traffic to or from the tracks of the Magnolia Petroleum
153 Company and the connection with the tracks of the Texarkana and Fort Smith Railway Company at Chaison, Texas. Issued June 2, 1926. Effective July 10, 1926.

Likewise, said defendant carrier, Texas and New Orleans Railroad Company, on May 14, 1935, and for several years prior thereto had on file with the Interstate Commerce Commission, in accordance with the provisions of Section 6 of the Act, its tariff described as No. 717-B I. C. C. No. Tex. 123, authorizing and requiring the payment to the plaintiff, of 90 cents per loaded car as compensation for services performed and facilities furnished by plaintiff, in connection with transportation of carload traffic to and from loading and unloading points on appropriate spurs and sidings in plaintiff's refinery at Chaison, Texas. The said schedule provided as follows:

Texas and New Orleans Railroad Company (Southern Pacific Lines) Local Freight Tariff No. 717-B (Cancels Tariff No. 717-A)

containing Allowance to Private Industries for Switching Carload Freight at Chaison, Texas. Applicable on Interstate and Texas Intrastate Traffic. Issued February 11, 1930. Effective March 19, 1930.

The Texas and New Orleans Railroad Company will pay to the Magnolia Petroleum Company an allowance of ninety (90) cents per car, as compensation for service, performed by the Magnolia
154 Petroleum Company, of switching carload freight, on which line haul transportation has been or will be performed, between loading or unloading tracks at the plant of the Magnolia Petroleum Company, on the one hand, and track connection with the Texas and New Orleans Railroad at Chaison, Texas, on the other hand.

Such switching service, performed by the Magnolia Petroleum Company with compensation therefor paid by the Texas and New Orleans Railroad Company, will be in lieu of the performance of such service by the Texas and New Orleans Railroad, as provided for in tariffs lawfully on file with the Interstate Commerce Commission or Railroad Commission of Texas requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks. (R. C. T. Circular No. 6911.)

The amount of such allowance of 90 cents per loaded car is less than the cost to plaintiff of performing the aforesaid service, and was less than it would have cost either of the said defendant carriers to perform the service with its own engines and employees. Such allowance, therefore, was not in excess of a just and reasonable allowance, and was lawful under paragraph (13) of Section 15 of the Interstate Commerce Act.

V

On July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, intiated a proceeding of inquiry designated as Ex Parte 104, and assigned the same for hearing at such times and places "with respect to such practices as the
155 Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges, and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight, the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of section 6 of the Interstate Commerce Act affect the measure of the transporta-

tion service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carrier's terminals to particular locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a session at Galveston, Texas, May 16 to 19, 1932, and a session at Kansas City, Missouri, May 23 to 26, 1932. At these various hearings witnesses appeared, gave oral testimony and filed documentary evidence purporting to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties, including the plaintiff.

156 A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff, by said defendant carriers, and by others; oral argument was had; and thereupon the Commission issued its report and order, dated May 14, 1935, subsequently referred to by the Commission as the original report, in which the Commission set forth its legal conclusions with respect to the general situation presented. Various supplemental reports thereto were issued on said date, among others, the Tenth Supplemental Report, dated May 14, 1935, and sub-titled Magnolia Petroleum Company Terminal Allowance, in which the Commission set forth its report and requirements with reference to the allowance paid to the plaintiff, as will more particularly hereinafter appear. The defendant carriers were notified and required, in and by the order attached to said supplemental report, to cease and desist, on or before July 15, 1935, and thereafter to abstain from the practices therein described.

Said original report of the Commission was issued in mimeograph form, and was subsequently reported in Volume 209 of the Commission's official reports beginning at page 11. A true copy thereof is attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length.

Said Tenth Supplemental Report of the Commission together with the order entered in connection therewith, is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

157 VI

All the evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants, and their connections, in the transportation of carload freight at, to and from Chaison, Texas, was presented to the Interstate Commerce Commission at a hearing before W. P.

Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an examiner, at Galveston, Texas, May 16 to 19, 1932, and at Kansas City, Missouri, on May 23 to 26, 1932.

VII

In alleged conformity with said order of May 14, 1935, defendant carriers filed with the Interstate Commerce Commission, their respective schedules, described as The Kansas City Southern Railway Company Supplement 2 to its I. C. C. No. 176 and Texas and New Orleans Railroad Company Supplement 1 to its I. C. C. No. Tex. 717–B, cancelling their aforesaid schedules then on file with the Interstate Commerce Commission granting said allowance of 90 cents per loaded car to plaintiff. Each of said cancelling supplements was issued in compliance with said order of the Interstate Commerce Commission in Ex Parte 104, Tenth Supplemental Report of May 14, 1935.

Thereafter, plaintiff filed its petition with the Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act, seeking a suspension of the said tariff as proposing, in alleged compliance with said order of May 14,
158 1935, to cancel the terminal allowance to plaintiff for facilities furnished and services performed by it at its plant at Chaison, Texas. The Commission advised the plaintiff on July 17, 1935, that such suspension request was denied.

Furthermore, plaintiff filed with the Commission its motion under date of July 2, 1935, to vacate the aforesaid order of May 14, 1935, or to extend the effective date thereof for ninety days. This motion was denied by order entered by the Commission under date of July 15, 1935, and which plaintiff received on July 17, 1935.

VIII

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of May 14, 1935, was issued.

IX

Inasmuch as the order of May 14, 1935 (in alleged conformity with which the tariffs referred to in Paragraph VII hereof were filed, cancelling the terminal allowance to the plaintiff), is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of, will not grant full measure of relief to this plaintiff, unless all action which has been taken by the defendant carriers be set aside and held for naught, thereby restoring and making effective the lawful terminal allowances in effect on May 14, 1935.

159

X

The said order of May 14, 1935, as set forth in Appendix B hereto is unlawful and void in the following respects:

(1) The Commission was without authority, either in law or in fact, to make the said order.

(2) There is no evidence upon which the Commission could find:

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally.

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for load at, and removal of loaded car from, point of loading, and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

160 (5) The evidence on which the order is based shows conclusively that the allowance paid by each of the said defendant carriers to plaintiff is for a transportation service embraced within the service for which each of the defendants publish, charge, and receive the rates named in its tariffs filed with the Interstate Commerce Commission; that the said tetrminal allowance is no more than just and reasonable and, being published in the tariffs of the defendant carriers, is just as binding upon each of the said defendants as is any rate named in its tariffs to be collected for the transportation of property by it in interstate commerce.

(6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant carriers in connection with the terminal allowance at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowance named in the tariffs of the said defendant carriers is paragraph (7) of Section 6. As stated by Commissioner Mahaffie in his dissenting report (reproduced in Appendix A hereto), so long as the allow-

ance is named in the tariffs of the defendants it must be paid. The record wholly fails to show any violation of Section 6, Paragraph 7.

XI

Plaintiff has handled, and will continue to handle for the said defendant carriers, loaded cars on which the terminal allowance payable to the plaintiff in accordance with the tariffs of the said defendant carriers would amount in the aggregate to not less
161 than Three Thousand Dollars ($3,000.00) per annum on interstate traffic. Unless the order of the Commission be set aside and the defendant carriers be required to withdraw their cancelling tariffs, plaintiff will be compelled to perform the transportation service of moving the empty and loaded cars from and to the points of loading and unloading to and from the rails owned by defendant carriers, for which transportation plaintiff will be compelled to assume an expense in excess of 90 cents per car more than if said terminal allowances had not been cancelled, amounting in the aggregate excess to more than Three Thousand Dollars ($3,000.00) per annum on interstate traffic, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof and inasmuch as your petitioner has no adequate remedy at law, and may have relief only in a Court of Equity, petitioner prays that this petition be received and filed; that writs of subpoena be issued by the Clerk of the Court, as provided by law, commanding the United States of America and The Kansas City Southern Railway Company and Texas and New Orleans Railroad Company to appear and defend this action; that notice hereof be given to the Attorney General of the United States and to the Interstate Commerce Commission; that upon the filing of this bill the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge, and that upon five days' notice of the time and place of hearing having been given to the Attorney General of the United States and to the Interstate Commerce Commission and to said respondent carriers, the petitioner be granted an interlocutory injunction restraining the United States of America and the Interstate Commerce Commission from en-
162 forcing the terms of said order which required respondent carriers to cease and desist on or before July 15, 1935, and thereafter to abstain from the practice in said order described; and that upon final hearing of this case, a decree be entered adjudging the said order to be in all respects null and void and permanently enjoining, annulling, and setting aside the enforcement, operation and execution of said order.

And petitioner further prays that a preliminary or interlocutory order or injunction be entered, requiring the defendant railroads and each of them, to withdraw the tariff supplements herein referred to, filed in alleged conformity with the said order of the Commission, and to restore to plaintiff the aforesaid terminal allowance

until final determination of this cause; and that upon the final hearing herein, a decree be entered perpetually enjoining, suspending, annulling and setting aside the said tariff supplements and requiring the said defendant carriers, and each of them, to file new tariffs restoring the terminal allowances in effect May 13, 1935, on interstate traffic handled for defendant carriers by the petitioner at its said plant at Chaison, Texas, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of May 14, 1935, and to restore the status quo of May 13, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the defendant railroad companies to vacate, annul, and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such
163 action as may be necessary to restore the parties and properties affected by said order to the status of May 13, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall deem meet; and plaintiff will ever pray.

LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
1522 First National Bank Bldg., Chicago, Illinois,
Solicitors for Plaintiff.

E. L. WILKERSON,
Magnolia Building, Dallas, Texas,
of Counsel.

[*Duly sworn to by W. M. Maddox; jurat omitted in printing.*]

164 *Appendix A*

[Omitted. Printed side page. 22 ante.]

165 [Appearances of Counsel Omitted.]

231 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

Magnolia Petroleum Company Terminal Allowance. Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Service. Submitted October 17, 1934. Decided May 14, 1935.

Service performed by industrial locomotives beyond the points of interchange now in use found not to be a service for which the

carriers are compensated in their interstate line-haul rates. Payment of an allowance, therefore, found unlawful.

Same appearances as in the original report.

Tenth Supplemental Report of the Commission by the Commission:

In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, decided concurrently herewith, certain principles were announced, concerning the propriety and lawfulness of the payment of allowances to individual industries heard on this record for the performance of spotting service at their plants,
232 or the performance of such service by respondents in lieu of payment. The portion of this proceeding now before us presents the question of whether certain respondent carriers can lawfully pay compensation in the form of an allowance out of the interstate line-haul rates for the performance of spotting service beyond the interchange tracks at the plant of the Magnolia Petroleum Company, hereinafter referred to as the Magnolia company, located at Chaison, Texas.

In 1911 the Magnolia Company acquired this refinery and from that time until 1921 considerable construction work was performed and the plant enlarged. At present the property contains about 1,200 acres enclosed by a fence. A large portion is used for oil storage tanks, some space near the river is occupied by wharves, the main refinery area contains about 80 acres, and some of the property is not used for industrial purposes.

There are slightly less than 10 miles of standard-gage track separated into more than 40 tracks within the plant inclosure. Most of these tracks are laid with 75 to 90-pound rail. Some are laid with 56-pound rail, but the latter are used only for intraplant switching. When the Magnolia company acquired this refinery it was served by the Texarkana & Fort Smith Railway Company, a part of The Kansas City Southern Railway Company, hereinafter termed the K. C. S. See Texarkana & F. S. Ry. Co. Control, 189 I. C. C. 253, 193 I. C. C. 521. Since 1915 the Texas and New Orleans Ex Parte No. 104, Part II, Suppplement No. 10—Sheet 2 Railroad Company, hereinafter referred to as the T. & N. O. has also served the Magnolia plant.

The T. & N. O. right-of-way and tracks touch the Magnolia property at the south end and extend northward through it for a
233. distance of 2,400 feet, then westward for 600 feet, and connect with the K. C. S. mill track over which the T. & N. O. operates for a distance of 400 feet to another section of the T. & N. O. tracks which extends northwesterly through the plant for 1,000 feet and joins the K. C. S. main tracks which approach the plant from the east. Practically all of the above trackage is bordered on either side by the industry's property. From this junction both respondent carriers use the joint track to move the traffic a distance of 300 feet to a point near the main refinery gate, where the indus-

trial tracks begin. Within the plant, 600 feet north of the gate, are located nine parallel tracks averaging about 1,200 feet in length. Five of these tracks compose the interchange yard where cars are delivered and received by both carriers.

Prior to 1921, the T. & N. O. traversed the most congested part of the main refinery area in effecting delivery on tracks located in the same vicinity as those now used. Whether or not the T. & N. O. owned all the tracks then used is not clear from the record, but those tracks contain sharp curves and severe grades, and operation thereover was difficult. The present interchange tracks have much greater capacity and are more convenient for both the carriers and the industry.

The principal inbound commodities are sulphuric acid, fats, asbestos fibre, fullers earth, and other articles used in the refining, manufacture and shipping of petroleum and its products. Gasoline, kerosene, naphtha, lubricating oil in tank cars and in packages, light and heavy fuel oil, paraffin wax in tank cars and in box cars, greases, lump coke and briquets, sulphuric acid, scrap iron, and car wheels are shipped outbound.

After delivery by the carriers on one of the five tracks
234 composing the interchange yard, loaded and empty cars are moved to the points of unloading or loading by an industrial locomotive. There are about 25 locations within the plant where loading or unloading is performed, and these are widely scattered. Cars to be loaded with heavy fuel oil are moved to loading racks located in the northwest portion of the plant, a distance of about 2,400 feet from the center of the interchange yard. Cars to be loaded with wax, grease, or barreled products are moved southward from the center of the interchange yard for a distance of about 1,200 feet, passing en route the point where they were originally taken into the plant, and then eastward for approximately the same distance, to where the barrel house, grease plant and wax moulding room are located. Cars for the loading of car wheels and scrap iron are moved in the same direction over these tracks to a point approximately 1,200 feet beyond the barrel house. Cars for loading coke are moved from the interchange yards southward for a distance of about 3,800 feet to where two tracks, each, approximately one-half mile long, connect, and the loading takes place at any designated point on these tracks. Coke briquets are loaded on a spur adjacent to one of the tracks last mentioned.

Tank cars for loading lubricating oil are moved southward from the interchange yard about 1,600 feet and then eastward approximately 1,200 feet to a loading rack with a capacity of 12 cars. Light oil such as gasoline, cleaning naphtha, light fuel oil, and kerosene are loaded at racks located on four tracks with an aggregate capacity of 66 cars, located immediately adjacent and parallel to the tracks used for interchange. There appears to be no reason which
235 would prevent the carriers from placing cars on or removing them from these tracks except that the industry does not

find it convenient for the service to be conducted in that manner. After the cars are loaded or unloaded, as the case may be, they are returned to the interchange tracks. For the service performed as above described, with its locomotives, the Magnolia company is paid an allowance.

The Magnolia company began operating one locomotive when it acquired the plant, and in 1914 purchased another. These are of the small saddle-tank type dissimilar to those employed by respondent carriers. They were required because of the large amount of construction work at the plant, and later were utilized in intraplant switching and spotting service. At the beginning of operations of the plant some of the spotting service was performed by the connecting carrier, but as the plant was enlarged much of the spotting service was performed by the plant locomotives and the carriers found it unnecessary to do more than deliver and receive cars on the interchange tracks.

The plant locomotives were in poor condition in 1921, and a locomotive was rented from the T. & N. O. The volume of business and the magnitude of switching service had greatly increased, and the industry considered means by which its expenses for switching might be reduced. It decided that part of the spotting service which it had theretofore performed was service which should properly be rendered by the respondent carriers and so advised them.

About 75 per cent of the traffic at the plant was handled by the T. & N. O. The principal negotiations which led to the allowance were conducted entirely with that respondent, although mention of
the conclusions which had been reached by the industry with
236 respect to the respondents' duty regarding spotting service
was made to an official of the K. C. S. Following a conference and preliminary survey of the switching conditions by the T. & N. O. and plant officials on December 20, 1921, an agreement was reached under which the T. & N. O. proposed to compensate the industry for the spotting service. It was decided that the work which the industry claimed was a T. & N. O. obligation would require two engine hours daily at an expense of $20. This was later converted into a cost-per-loaded-car basis of 72 cents, and became effective as an allowance May 25, 1923. After the details of the allowance had been agreed upon with the T. & N. O., the Magnolia company, in a letter dated April 27, 1923, advised the vice president in charge of traffic of the K. C. S., among other things that:

"We have now received a copy of the tariff which the Southern Pacific proposed to file to cover the compensation which we must admit appeals to us from a standpoint of convenience, and feeling that your company, no doubt, would desire to make the same arrangement, rather than have your engines perform the service while the T. & N. O. pays our company for performing the service for it, as it would probably create some inconvenience in the switching operation, we are submitting the matter for your consideration."

Keen competition existed between the T. & N. O. and the K. C. S. for this business. Prompt attention was given the fact that unknown to the K. C. S., the T. & N. O. by meeting the needs of the industry had placed itself in an advantageous position to secure traffic, and upon receipt of that letter the vice president of the K. C. S. advised the industry by long distance telephone that his company
237 would file a similar tariff. The K. C. S. published the tariff effective June 20, 1923, without investigation as to the cost of performing the service.

This was the first allowance granted to an oil refinery in that section of the country. Others followed rapidly and this was foreseen by the president of the K. C. S., who advised the chairman of its executive committee on June 1, 1923:

* * * * * * *

"I am enclosing herewith copy of letter addressed to Vice President Holden by the Assistant Traffic Manager of the Magnolia Petroleum Company under date of April 27, which is the first advice we had. Copy of Southern Pacific tariff No. 717 is enclosed; also copy of our tariff No. 2860 covering similar action which was necessary for us to take.

"This movement of the Southern Pacific puts quite a burden on the railroads as it means similar action at all the refineries we serve in the Beaumont-Port Arthur district. Their allowance is predicated on the theory that carriers must deliver and receive loads at loading and unloading points either on their own rails or on rails which have been furnished by the industrial plant; that the duty of the carrier is not completed until such delivery is effected; and if an industry would relieve the carrier of this expense it is entitled to compensation therefor.

"The Gulf Refining Company and the Texas Company have been notified of our willingness to grant them the same concession but neither of them have asked us to act thereon. They simply acknowledged receipt of our communication, stating that they would go into the matter and advise us definitely which has not yet been done."

Applications for allowances were made by the Gulf Refining Company and the Texas Company within a short time thereafter, and effective March 31, 1924, an allowance of 90 cents per loaded car was made to these oil companies by the K. C. S. and the T. & N. O. All of the above allowances were approved by the Railroad Commission of Texas on April 23, 1926.

238 A third locomotive had been acquired by the Magnolia company in December 1923. Because of the insistence of the Magnolia company that the 72-cent allowance did not cover its costs, a joint study was conducted by the carriers and the industry for a seven-day period in March 1924. This developed an average cost of $1.01 for the 344 loaded cars switched during that period, but because the allowances to the Gulf and Texas companies had been fixed at 90 cents, and that amount had been established for oil com-

panies in that section of the country as a proper allowance, it was tendered to and accepted by the Magnolia company.

The record is conclusive that the interchange tracks at the Magnolia company plant were constructed by that company primarily for its convenience in the receipt and delivery of carload shipments. Its locomotives are instrumentalities necessary for carrying on the industrial processes. The present method of spotting cars is employed strictly for the convenience of the industry and the service could not be performed by the carriers except by the use of locomotives assigned to work under the direction and control of the industry. Carriers have no obligation under their line-haul rates, to perform service beyond an agreed point of interchange solely for the convenience of an industry. Merchants Shipbuilding Corp. v. Pennsylvania R. Co., 61 I. C. C. 214, 217; Car Spotting Charges, 34 I. C. C. 609, 617. The record shows that cars interchanged with the industry have been received and delivered by respondents upon tracks designed specifically by the oil company for that purpose, or by long usage established as the proper and agreed interchange point.

239 We find that the interchange tracks at this plant are reasonably convenient points for the delivery and receipt of interstate shipments of carload freight; that the industry performs no service beyond such points of interchange for which the respondent carriers are compensated in their interstate line-haul rates; and that by the payment of an allowance the respondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally and refund or remit a portion of the rates or charges collected or received as compensation for the interstate transportation of property, in violation of section 6 (7) of the Interstate Commerce Act.

An appropriate order will be entered.

MAHAFFIE, Commissioner, dissenting: For the reasons indicated in my separate expression in the original report herein, I am unable to agree with the finding that the practice condemned by the majority constitutes a violation of section 6 (7) of the act.

Commissioner AITCHISON did not participate in the disposition of this case.

240 ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of May, A. D. 1935.

Magnolia Petroleum Company Terminal Allowance. Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses. Part II, Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by The

Kansas City Southern Railway Company and the Texas and New Orleans Railroad Company to the Magnolia Petroleum Company, for performance by the latter of spotting service within its plant at Chaison, Texas, and the Commission having on the date hereof, made and filed a report containing its legal conclusions with respect to the general situation presented, and also having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Magnolia Petroleum Company, which reports are hereby referred to and made a part hereof, and the Commission having found in said supplemental report that by the payment of said allowance The Kansas City Southern Railway Company and the Texas and New
241 Orleans Railroad Company violate the Interstate Commerce Act as set forth in the above-mentioned reports:

It is ordered, That The Kansas City Southern Railway Company and the Texas and New Orleans Railroad Company be, and they are hereby, notified and required to cease and desist on or before July 15, 1935, and thereafter to abstain from such unlawful practice.

By the Commission.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

242 In United States District Court

No. 691. Equity

[Title omitted.]

Order convening three judge court, etc.

Filed August 9, 1935

On consideration of the above entitled cause it is ordered that the application for a Preliminary Injunction, herein, be heard in the Court Room of the United States District Court at New Orleans, Louisiana, on Monday, the 19th day of August 1935, at 10:00 o'clock A. M. before a statutory Court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said Court to consist of Honorable Rufus E. Foster, Circuit Judge and Honorable Wayne G. Borah and T. M. Kennerly, District Judges, which is hereby convened; and that the defendants be ordered then and there to show cause, if any they can, why the Preliminary Injunction prayed for should not issue.

T. M. KENNERLY, *Judge.*

HOUSTON, TEXAS, *August 8, 1935.*

[File endorsement omitted.]

243 In United States District Court

In Equity No. 691

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935, at New Orleans

To the honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, sec. 45a), I hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of myself, as its counsel, in the above-entitled suit.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON, *Chief Counsel.*

[File endorsement omitted.]

244 In United States District Court

No. 691.—Equity

[Title omitted.]

Answer of Interstate Commerce Commission

Filed August 19, 1935, at New Orleans, La.

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto or unto or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission, for the purpose of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XI, inclusive, of the bill of complaint, the Commissioner admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph V of the bill of complaint, and the Tenth Supplemental Report and order of said date, referred to in said paragraph V, said order being men-

tioned also in paragraph III of the bill of complaint, copies of which are attached to and made parts of the bill of complaint as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal,
245 services which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether certain practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers, were in violation of the Interstate Commerce Act, and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein, by the counsel of said parties; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called
246 to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of May 14, 1935, was not made or entered, either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies

each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph X of the bill of complaint, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, unless said order of May 14, 1935, is set aside, plaintiff will suffer irreparable loss and injury, as alleged in paragraph XI of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and order, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

[*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

247 [File endorsement omitted.]

248 In United States District Court

In Equity No. 691

[Title omitted.]

Interlocutory injunction

Filed at New Orleans August 19, 1935

The plaintiff having heretofore filed its Bill of Complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation, and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 14th day of May 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 15th day of July 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the court herein;

And the Honorable T. M. Kennerly, Judge of the District Court of the United States for the Southern District of Texas, pursuant to Section 47 of the United States Code, having called to his as-

sistance to hear and determine said application for said interlocutory injunction, two other judges, namely, Honorable Rufus E. Foster, United States Circuit Judge, and Honorable Wayne G. Borah, United States District Judge;

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Monday, the 19th day of August 1935, was given to the above
249 named respondents, to the Attorney General of the United States and to the Interstate Commerce Commission.

It further appearing from the Bill of Complaint that defendants, The Kansas City Southern Railway Company and Texas and New Orleans Railroad Company, have filed certain tariff schedules, to become effective July 15, 1935, in compliance with the aforesaid order of the Commission, whereby each of said defendants will cancel the allowance which has been paid plaintiff for many years last past as compensation for transportation services under paragraph (13) of Section 15 of the Interstate Commerce Act; and it appearing that the plaintiff in order to send and receive its shipments will be compelled to perform said transportation services without compensation after said tariffs are allowed to become effective on said date, to the irreparable damage of said petitioner; and that the effective date of such tariffs should be suspended pending the outcome of the matters in controversy in this proceeding;

And the court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises, and upon hearing;

Now, therefore, it is ordered that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 14th day of May 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to petitioner, Magnolia Petroleum Company, and the said report and order are suspended, stayed, and set aside pending the further order of the court.

It is further ordered that the aforesaid defendants, The Kansas City Southern Railway Company and Texas and New Orleans Railroad Company be, and each of them is, required to cancel their respective tariff supplements as set forth in paragraph VII of the Bill of Complaint, to the extent that the same are in conformity with the said order of the Interstate Commerce Commission,
250 and to restore the aforesaid terminal allowance to plaintiff as provided in their respective tariffs in effect on and prior to the 15th day of July 1935, as referred to in paragraph IV of the Bill of Complaint.

Plaintiff shall immediately execute and file a bond in the sum of Five Thousand ($5,000.00) Dollars, to be approved by one of the

Judges of this Court, conditioned that plaintiff will pay to the defendants such sum as this Court may determine is proper if this interlocutory injunction is dissolved.

By the Court.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

[File endorsement omitted.]

251 In United States District Court

In Equity No. 691

[Title omitted.]

Answer of United States

Filed September 9, 1935

United States, one of the above defendants, for answer to the Bill of Complaint filed herein against it says:

I

United States admits for the purposes of this suit that the facts alleged in paragraphs I, II, and III of the Bill are true, except that it denies the statement in said paragraph III that the services and facilities employed by plaintiff in the movement of cars within its plant are transportation services within the meaning of the Interstate Commerce Act.

II

United States denies the truth of the matters, things, and conclusions alleged in paragraph IV of the Bill, except that it admits that the defendant carriers file and publish tariffs naming rates for the transportation of property to and from points on their lines, including the plant of the plaintiff mentioned in said paragraph; and that said defendant carriers also published and maintained the so-called terminal switching tariff mentioned in said paragraph purported to compensate plaintiff for performance of terminal switching at its plant; but United States denies the allegations contained in said paragraph with respect to the legal effect of said tariffs, denies that said tariffs make lawful the payment to plaintiff of the allowance described in the bill, denies that the services which plaintiff performs in switching and moving cars within its private grounds and plants constitute a transportation service within the meaning of the Interstate Commerce Act and denies that the
252 *the* defendant carriers may either perform said service without charge in addition to their line-haul rates or may pay an allowance to plaintiff therefor.

III

United States admits that the facts alleged in paragraphs V, VI, and VII of the Bill are true except that it denies the implication contained in said paragraph VI that the evidence heard by the Interstate Commerce Commission on the dates mentioned in said paragraph constitutes all the pertinent and relevant evidence heard and considered by the Commission concerning the movement of cars within plaintiff's plant.

IV

United States disclaims any knowledge as to whether plaintiff will, at the hearing in this case, tender a certified copy of the record before the Interstate Commerce Commission out of which its said order of May 14, 1935, was issued, as alleged in paragraph VIII of the Bill, and therefore neither admits nor denies the allegations of said paragraph.

V

United States denies the allegations contained in paragraphs IX, X, and XI of the Bill and particularly denies (1) that plaintiff will suffer irreparable loss and injury or any legal damage if said order of May 14, 1935 is not enjoined, and (2) that plaintiff has no adequate remedy at law.

VI

Except as herein expressly admitted, United States denies each and every allegation of the Bill of Complaint and the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the Bill of Complaint, the United States prays that the relief therein prayed be denied and that the Bill be dismissed with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

ELMER B. COLLINS,
Special Assistant to the Attorney General.
DOUGLAS W. MCGREGOR,
United States Attorney.
JOHN DICKINSON,
Assistant Attorney General.

253 [*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

[File endorsement omitted.]

254 In United States District Court

In Equity No. 691

[Title omitted.]

Stipulation extending time to answer

Filed September 13, 1935

In the above entitled and numbered cause it is stipulated by and between plaintiff and defendant Railroad Companies (and Trustees, where Trustees are defendants) that the time within which said Railroad defendants (or Trustees, if any) may plead or answer shall be and is hereby extended for a period of thirty days, but not to extend in any event thirty days beyond this 27th day of August 1935.

JOHN S. BURCHMORE,
Solicitors for Plaintiff.
WM. E. DAVIS and ORGAIN CARROLL & BELL,
For Kansas City Southern Ry. Co.
J. H. TALLICHET,
Texas and New Orleans Railroad Company,
Solicitors for Defendants.

[File endorsement omitted.]

255 In United States District Court

No. 691. In Equity

[Title omitted.]

Answer of defendant, Texas and New Orleans Railroad Company, to plaintiff's original bill of complaint

Filed September 25, 1935

Comes now Texas and New Orleans Railroad Company, one of the defendants herein, and for answer to plaintiff's original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading, or loading in plaintiff's plant, and alleges that its said

duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowance made by it and described in the reports of the Interstate Commerce Commission in Ex Part 104, part II were and are no more
256 than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

J. H. TAILLICHET,
Solicitor for Texas and New Orleans Railroad Company, Defendant.

[File endorsement omitted.]

257 In United States District Court

In Equity No. 691

[Title omitted.]

Separate answer of Kansas City Southern Railway Company

Filed September 26, 1935

Now comes The Kansas City Southern Railway Company, one of the defendants in the above entitled case, and for answer to the bill of complaint herein states:

1. Defendant denies that it owns a line of railroad in the State of Texas, but states that it operates a line of railroad in said state under lease, pursuant to authority duly granted and issued by the Interstate Commerce Commission. For the purposes of this suit defendant admits each and every other allegation contained in Sections I to III, inclusive, of the bill of complaint.

2. For answer to Section IV of the bill of complaint defendant admits that by lawful tariffs filed with the Interstate Commerce

Commission it published and joined with other carriers in publishing rates and charges for the line-haul transportation of property to and from the plant of plaintiff at Chaison, Texas; that it filed with the Interstate Commerce Commission, pursuant to Section 6 of the Interstate Commerce Act, tariffs providing for a terminal allowance as alleged in Section IV of the bill of complaint;
258 and that prior to the issuance of the reports and orders of the Interstate Commerce Commission in its Docket Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, defendant had understood and believed that the aforesaid line-haul rates provided for the full compensation to defendant and other carriers for the placement of empty cars at the place of loading, and the removal of loaded cars therefrom, within said plant, and that it was required or permitted to either perform the service for which said allowance was published or to pay plaintiff an allowance for performing the same without a charge in addition to the line-haul rates; but, by reason of the aforesaid reports and orders of the Interstate Commerce Commission defendant neither admits nor denies the allegations contained in Section IV of the bill of complaint herein, except those expressly admitted, and demands proof thereof.

3. Further answering Section IV of the bill of complaint, defendant admits and alleges that the amount of the said allowance of the ninety cents per loaded car is less than the cost to plaintiff of performing the service for which said allowance was made, and is less than it would have cost this defendant to perform said service with its own engines and employes, and that such allowance was therefore not in excess of a just and reasonable allowance.

4. Defendant admits the allegations contained in Section V of the bill of complaint.

5. Defendant is informed and believes that the allegations contained in Section VI of the bill of complaint are correct, and therefore admits the same.

6. Defendant admits the allegations contained in paragraph VII of the bill of complaint.

7. Defendant has no information as to the allegations contained in paragraph VIII of the bill of complaint.

259 8. Defendant denies the matters and things set forth in Section IX of the bill of complaint in manner and form as alleged.

9. For answer to Section X of the bill of complaint, defendant admits that the provisions for the allowance referred to therein were duly and lawfully published and on file with the Interstate Commerce Commission on and before July 14, 1935, pursuant to and in conformity with the provisions of the Interstate Commerce Act, and admits that the record and evidence before the Interstate Commerce Commission in its Ex Parte 104, Part II, wholly failed to show any violations of paragraph (7) of Section 6 of said Interstate Commerce Act by this defendant. Defendant further alleges, in answer

to Section X of the bill of complaint, that at the time of publishing the provisions for said allowance, and until reports and orders of the Interstate Commerce Commission in its proceeding known and designated as Ex Parte 104, Practices of Carriers Affecting Operating Revenues and Expenses, Part II, Terminal Services, defendant was of the opinion that it was, either required or permitted to perform the service for which said allowance was paid without the exaction of charges in addition to the line-haul rates published by defendant and other railroads, but that in view of the reports and orders of the Interstate Commerce Commission, made after the hearing of evidence in the aforesaid proceeding, defendant neither admits nor denies the other allegations contained in Section VII of the bill of complaint, but demands proof thereof.

10. For answer to Section XI of the bill of complaint, defendant admits, upon information and belief, that plaintiff has handled, and will continue to handle for the defendant carriers, loaded cars on which the terminal allowance, if paid in accordance with the tariffs formerly in effect on behalf of defendant carriers, would amount in the aggregate to not less than $3,000 per annum on interstate traffic. Defendant is not sufficiently advised as to the other matters and things alleged in Section XI of the bill of complaint to enable it either to admit or deny the same, and it therefore demands
260 proof thereof.

Wherefore, having fully answered the bill of complaint herein, this defendant prays that it be discharged with its costs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY.
By F. H. MOORE,
W. E. DAVIS,
ORGAIN CARROLL & BELL,
Its Solicitors.

[File endorsement omitted.]

261 *Opinion*

Filed February 24, 1937

[Omitted. Printed side page. 485 ante.]

275 In Equity No. 692

[File endorsement omitted.]

276 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 692

THE TEXAS COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA; TEXAS AND NEW ORLEANS RAILROAD COMPANY; MISSOURI PACIFIC RAILROAD COMPANY (L. W. BALDWIN AND GUY H. THOMPSON, TRUSTEES); THE INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE ATCHISON TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS; BURLINGTON-ROCK ISLAND RAILROAD COMPANY, DEFENDANTS

Bill of complaint

Filed August 12, 1935

To the Honorable, the Judges of the District Court of the United States for the Southern District of Texas, Houston Division:

277 The Texas Company, a corporation, presents this its bill of complaint against the United States of America; Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees); The International-Great Northern Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees); The Beaumont, Sour Lake & Western Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees); The St. Louis, Brownsville and Mexico Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees); The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Missouri-Kansas-Texas Railroad Company of Texas; and Burlington-Rock Island Railroad Company, and thereupon respectfully states:

I

Plaintiff, The Texas Company, is a corporation organized and existing under the laws of the State of Delaware and having one of its principal offices at Houston, Texas, in the Southern District of Texas, Houston Division. Plaintiff is engaged in the refining of petroleum and the production of various products therefrom, with refinery and plant at Houston, Texas, from which it distributes its products by shipment in carload lots, by railroad, in interstate com-

merce, to various states of the United States, other than Texas. In the conduct of its business, plaintiff receives carload shipments of various commodities, moving in interstate commerce, by railroad, to its said plant at Houston, Texas, from points of origin outside of the State of Texas.

II

Defendants, Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company, The International-Great Northern
278 Railroad Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, The Atchison, Topeka and Santa Fe Railway Company, Gulf, Colorado and Santa Fe Railway Company, Missouri-Kansas-Texas Railroad Company of Texas and Burlington-Rock Island Railroad Company, hereinafter sometimes for convenience referred to collectively as defendant carriers, are corporations organized and existing under the laws of various states of the United States, all of whom are qualified to do business and are doing business in the State of Texas and have lines of railroad within, or extending into, through corporate connections which will be hereinafter shown, the said Southern District of Texas, Houston Division. The properties of the said Missouri Pacific Railroad Company are now in the custody of L. W. Baldwin and Guy A. Thompson, trustees appointed by the District Court of the United States for the Eastern District of Missouri, Eastern Division.

The properties of the said The International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, and The St. Louis, Brownsville and Mexico Railway Company are now likewise in the custody of the said L. W. Baldwin and Guy A. Thompson, Trustees.

Each of said defendant carriers is engaged in the transportation of property by railroad in interstate commerce, and as such, is subject to the provisions of an Act of Congress entitled "An Act to Regulate Commerce," and approved February 4, 1887, and all acts supplemental thereto or amendatory thereof, being the Interstate Commerce Act.

Said carriers receive at points of origin on their lines of railroad, as well as from connecting carriers, carload freight for transporta-
tion to and delive'y at plaintiff's aforesaid refinery at Houston,
279 Texas, and in like manner receive freight from plaintiff at its said plant for transportation to destinations on their own lines or the lines of the other carriers, all in interstate commerce.

The capital stock of defendant Gulf, Colorado and Santa Fe Railway Company, is owned by The Atchison, Topeka and Santa Fe Railway Company and control under such stock ownership is vested in said The Atchison, Topeka and Santa Fe Railway Company which publishes tariffs "for account" of the Gulf, Colorado and Santa

Fe Railway Company, but does not itself serve said plant of the plaintiff.

Insofar as said defendants The International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, and The St. Louis, Brownsville and Mexico Railway Company, Gulf, Colorado and Santa Fe Railway Company, Missouri-Kansas-Texas Railroad Company of Texas, and Burlington-Rock Island Railroad Company participate in such traffic to and from said plant, such traffic is handled to and from the rails of these carriers to and from said plant via the facilities of the Port Terminal Railroad Association, which is a joint facility organization of these said defendant carriers, the defendant Texas and New Orleans Railroad Company and others. The said Texas and New Orleans Railroad Company serves said refinery directly over its own rails.

Said defendant, Missouri Pacific Railroad Company does not serve the aforesaid refinery of the plaintiff. Said defendants, The International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, and The St. Louis, Brownsville and Mexico Railway Company, which are understood to be subsidiaries of the said defendant Missouri Pacific Railroad Company, serve and reach the plaintiff's aforesaid refinery through the facilities of the aforesaid Port Terminal Railroad Association. The said The International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, and The St. Louis, Brownsville and Mexico Railway Company are not named as respondents in the report and order of the Interstate Commerce Commission which is hereinafter referred to and described.

280

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation, and execution of an order of the Interstate Commerce Commission, entered July 11, 1935, in its docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services; and to enjoin and restrain the said defendant carriers from the cancellation of tariffs filed with the Interstate Commerce Commission authorizing and providing for an allowance of 90 cents per loaded car for services and facilities connected with the transportation of property and for the furnishing of instrumentalities used in such transportation at plaintiff's aforesaid plant at Houston, Texas, alleged to be required by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel, or in any manner depart from the allowances for transportation service set forth in tariffs on file with the Interstate Commerce Commission for services and facilities in transportation at plaintiff's aforesaid plant at Houston, Texas, or to make any effort to modify or change said tariffs in order to comply with the

requirements of the said order, as more fully hereinafter set
281 forth, and to set aside and hold for naught any and all acts of said defendant carriers performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated July 11, 1935.

IV

Said defendant carriers by lawful tariffs, on file with the Interstate Commerce Commission, have published and joined with other carriers in publishing rates and charges for the transportation of property to and from the spurs, sidings, tracks, and loading and unloading points at the plant of the plaintiff at Houston, Texas, which rates and charges so filed and established, contemplate the placement of the empty cars at the place of loading and the removal of the loaded cars therefrom and transportation over the lines of the defendants and their connections to consignees at final destination of said shipments, and also, in like manner, contemplate the placing of the inbound loaded cars at the final point of unloading in the plant of the plaintiff and the removal of the empty cars therefrom.

Plaintiff demanded of said defendant carriers that they perform their duty under the law as set forth in paragraph IX hereof, by transferring empty and loaded cars to and from loading and unloading points in plaintiff's said plant. The defendant railroad companies, in accordance with the requirements of the law, and performing their duty under the law, elected to have plaintiff perform the terminal services at its said plant. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between interchange tracks and points of loading and unloading in its said plant.

282 V

Texas and New Orleans Railroad Company now has, and for several years has had, on file with the Interstate Commerce Commission, in accordance with the provisions of Section 6 of the aforesaid Interstate Commerce Act, its freight tariff No. 757-G, I. C. C. Tex. 191, which requires and authorizes the payment to the plaintiff of 90 cents per car as compensation for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's plant at Houston, Texas, and track connection with the Texas and New Orleans Railroad. Said tariff was issued and effective, October 29, 1931, and succeeded previous schedule No. 757-C, I. C. C. Tex. 107, under the provisions of which said allowance became effective December 8, 1929. Said latter schedule succeeded a previous tariff schedule No. 757-A, I. C. C. No. 1544, effective August 29, 1925, under which a similar allowance of 90

cents per car by said Texas and New Orleans Railroad Company was paid to the Galena Signal Oil Company which operated said plant until about December 1, 1928, when it was acquired by this plaintiff. Said tariff No 757–A, I. C. C. No. 1544, succeeded previous schedules under the provisions of which allowances in lesser amount to plaintiff's said predecessor, Galena Signal Oil Company, became effective December 26, 1923. Said defendant paid said allowance of 90 cents per loaded car to this plaintiff on cars handled by its facilities during the period from December 1, 1928, to December 7, 1929, under plaintiff's claim for reparation No. 64301, I. C. C. Docket No. 133528.

283 Said defendant The International-Great Northern Railroad Company, for itself and The Beaumont, Sour Lake & Western Railway Company, and The St. Louis, Brownsville and Mexico Railway Company issued and filed with the Interstate Commerce Commission in accordance with said provisions of Section 6 of the aforesaid Act to Regulate Commerce, a joint tariff No. 1564–A, I. C. C. No. 1069, authorizing and requiring the payment to the plaintiff of 90 cents per car for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's said plant and track connections with said carriers' aforesaid facility, the Port Terminal Railroad Association, at Houston, Texas. Said tariff was issued effective October 4, 1931, and succeeded previous schedule No. 1564, I. C. C. No. 1067, under the provisions of which said allowance became effective September 4, 1931.

Said defendant The Atchison, Topeka and Santa Fe Railway Company issued and filed with the Interstate Commerce Commission in accordance with said provisions of Section 6 of the aforesaid Act to Regulate Commerce, for account of Gulf, Colorado, and Santa Fe Railway Company, a tariff circular No. 2439, I. C. C. No. 12063, effective as to interstate shipments September 16, 1931, which requires and authorizes the payment to the plaintiff of 90 cents per car as compensation for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's said plant and track connections with said defendant Gulf, Colorado and Santa Fe Railway Company's said facility the Port Terminal Railroad Association, at Houston, Texas.

284 Said defendant Missouri-Kansas-Texas Railroad Company of Texas issued and filed with the Interstate Commerce Commission in accordance with said provisions of Section 6 of the aforesaid Act to Regulate Commerce, its tariff No. 1901–R, I. C. C. No. C–238, authorizing and requiring the payment to the plaintiff of 90 cents per car for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks

at plaintiff's said plant and track connections with said defendant's facility, the Port Terminal Railroad Association, at Houston, Texas. Said tariff became effective February 9, 1935, and succeeded previous schedule No. 1901–P, I. C. C. No. C–153, under the provisions of which said allowance became effective in September or October 1931.

Said defendant Burlington-Rock Island Railroad Company issued and filed with the Interstate Commerce Commission in accordance with said provisions of Section 6 of the aforesaid Act to Regulate Commerce, its tariff No. 713, I. C. C. No. 33, authorizing and requiring the payment to the plaintiff of 90 cents per car for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's aforesaid plant and track connections with said defendant's facility, the Port Terminal Railroad Association, at Houston, Texas. Said tariff became effective as to interstate shipments September 23, 1931.

The amount of such allowances is less than the cost to the plaintiff for performing the aforesaid service, and is less than it would cost the said defendant railroad carriers, or either of them, to perform the service with their own engines and employees. Such allowances, therefore, are not in excess of just and reasonable allowances and are lawful under the provisions of paragraph 13 of Section 15 of the said Act to Regulate Commerce.

285

VI

In July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as Ex Parte 104, and assigned the same for hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a hearing at Galveston, Texas, May 16–19, 1932. At these various hearings witnesses appeared, gave oral testimony, and filed documentary evidence purport-
286 ing to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties, including the plaintiff.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff and others, oral argument was had and thereupon the Commission issued its report and order, dated May 14, 1935, in which the Commisison set forth its legal conclusions with respect to the general situation presented; various supplemental reports thereto were issued on said date; and further supplemental reports were later issued, among others, the Twenty-fourth Supplemental Report dated July 11, 1935, in which the Commission set forth its report and requirements with reference to the allowance paid to the plaintiff, as will more particularly hereinafter appear.

Said original report of the Commission was served in mimeographed form and later reported in Volume 209 of the Commission's official reports beginning at page 11. A true copy thereof is attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length.

A true copy of said Twenty-fourth Supplemental Report of the Commission and said order thereon of July 11, 1935, is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

VII

The evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants, and their connections, in the transportation of carload freight at, to and from Houston, Texas, was
287 presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an Examiner, during sessions at Galveston, Texas, May 16 to 19, 1932.

VIII

In alleged conformity with said order of July 11, 1935, the railroad defendants filed their several tariffs as follows:

Texas & New Orleans Railroad Company Supplement 1 to aforesaid tariff No. 757–G, I. C. C. Tex. 191, effective September 3, 1935, cancelling aforesaid tariff then on file with the Interstate Commerce Commission granting a terminal allowance of 90 cents per loaded

car to plaintiff, as defined in the Commission's Twenty-fourth Supplemental Report, "Appendix B" hereto.

The International-Great Northern Railroad Company, for itself and The Beaumont, Sour Lake & Western Railway Company, and The St. Louis, Brownsville and Mexico Railway Company Supplement No. 1 to aforesaid joint tariff No. 1564–A, I. C. C. 1069, effective September 3, 1935, cancelling aforesaid tariff then on file with the Interstate Commerce Commission granting a terminal allowance of 90 cents per loaded car to plaintiff, as defined in the Commission's said Twenty-four Supplemental Report, "Appendix B" hereto.

The Atchison, Topeka and Santa Fe Railway Company, for account of the Gulf, Colorado and Santa Fe Railway Company, Supplement No. 1 to aforesaid Circular No. 2439 I. C. C. No. 12063, effective August 25, 1935, cancelling aforesaid schedule then on file with the Interstate Commerce Commission granting a terminal allowance of 90 cents per loaded car to plaintiff, as de-
288 fined in the Commission's said Twenty-fourth Supplemental Report, "Appendix B" hereto.

Missouri-Kansas-Texas Railroad Company of Texas Supplement No. 6 Item 386–A to aforesaid tariff No. 1901–R, I. C. C. No. C238, effective September 3, 1935, cancelling aforesaid tariff then on file with the Interstate Commerce Commission granting a terminal allowance of 90 cents per loaded car to plaintiff, as defined in the Commission's said Twenty-fourth Supplemental Report, "Appendix B" hereto.

Burlington-Rock Island Railroad Company Supplement No. 1 to aforesaid tariff No. 713, I. C. C. No. 33, effective September 3, 1935, cancelling the aforesaid tariff then on file with the Interstate Commerce Commission granting a terminal allowance of 90 cents per loaded car to plaintiff, as defined in the Commission's said Twenty-fourth Supplement Report, "Appendix B" hereto.

IX

Section 1 of the Interstate Commerce Act, U. S. Code, title 49, Sec. 1, 41 Stat. L., 474, provides:

"(1) That the provisions of this Act shall apply to common carriers engaged in—

"(a) The transportation of passengers or property wholly by railroad, * * *.

"(2) The provisions of this Act shall also apply to such transportation of passengers and property * * * but only in so far as such transportation * * * takes place within the United States, * * *.

"(3) The term 'common carrier' as used in this Act shall include * * * all persons, natural or artificial, engaged in such transportation * * * as aforesaid as common carriers for
289 hire. * * * The term 'railroad' as used in this Act shall include all * * * the road in use by any common carrier

operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of * * * property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration, or icing, storage, and handling of property transported. * * *

"(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of * * * property to provide and furnish such transportation upon reasonable request therefor, * * *."

Section 6 provides:

"(1) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, * * * when a through route and joint rate have been established. * * * The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property * * * will be carried, * * * and shall also state separately all terminal charges, * * * and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value
290 of the service rendered to the * * * shipper, or consignee. * * * The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act. * * *

"(7) No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of * * * property, as defined in this Act, unless the rates, * * * and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of * * * property, or for any service in connection therewith, between the points named in such tariffs than the rates, * * * and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, * * * and charges so specified, nor extend to any shipper or person any privileges or facilities in the transpor-

tation of passengers or property, except such as are specified in such tariffs."

Section 15, paragraph 13, provides:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Act approved February 19, 1903, as amended June 29, 1906 (U. S. Code, title 49, Sec. 41, 32 Stat. L. 847), provides, Section 1:

291 "The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, * * * and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce, and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. * * * Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act."

X

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of July 11, 1935, ostensibly was issued.

292 XI

Inasmuch as the order of July 11, 1935, in alleged conformity with which the tariffs referred to in paragraph VIII hereof were

filed, cancelling the terminal allowances to the plaintiff is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of, will not grant full measure of relief to this plaintiff, unless all action which has been taken by the individual railroad defendants be set aside and held for naught, thereby restoring and making effective the lawful terminal allowances in effect on July 10, 1935.

XII

The said order of July 11, 1935, as above set forth, is unlawful and void in the following respects:

(1) The Commission was without authority, either in law or in fact, to make the said order.

(2) There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally;

293 (d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for load at, and removal of loaded car from, point of loading, and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

(5) The evidence on which the order is based shows conclusively that the terminal allowances paid by the defendant railroad companies to plaintiff are for transportation services embraced within the services for which the defendant railroad companies publish, charge, and receive the rates named in their tariffs filed with the Interstate Commerce Commission; that the said terminal allowances are no more than just and reasonable and, being published in the tariffs of the defendant railroad companies, are just as binding upon the defendant railroad companies as are any rates named in their

tariffs to be collected for the transportation of property by them in interstate commerce.

(6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant railroad companies in connection with the terminal allowances at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowances named in the tariffs of the defendant railroad companies is paragraph
294 (7) of Section 6; and so long as the allowances are named in the tariffs of the defendants they must be paid. The record wholly fails to show any violation of Section 6, paragraph (7).

XIII

Further, plaintiff shows that prior to 1905 the question had arisen as to the Commission's power over allowances to shippers for services performed and facilities furnished by them for carriers subject to the Interstate Commerce Act. In its annual report to the Congress in 1905 the Commission said:

"Terminal roads, elevator charges, and private cars.

"There is an important class of cases in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like property. This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such preference may take the form of an excessive division to a terminal road owned by the shipper, the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one shipper to another. It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We should hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present sys-
295 tem. Moreover, there are many instances in which the service can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public, if provided by the shipper himself. We do think, however, that the commission should be empowered in a case of this kind, to determine whether the allowance to the property owner is a just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy

would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Thereupon on June 29, 1906, 34 Statute 584, Section 1 of the Interstate Commerce Act was amended so that the term "railroad" should include—

"all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

The section was further amended so that the term "transportation" includes—

"all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration, icing, storing, and handling of properly transported; and it shall be the duty of every carrier, subject to the provisions of this Act, to provide and furnish such transportation upon reasonable request therefor."

Section 6 was amended so as to require the schedules of rates filed by carriers to "state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed." Section 6 was further amended by the addition of the following to par-
296 agraph (7): "Nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15 was amended by the addition of the following paragraph:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Commission has no power to prohibit defendant railroad companies from employing plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad companies to plaintiff for service and facilities is more than is just and reasonable for such serv-

ices rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of July 11, 1935, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

297 XIV

Plaintiff has handled, and will continue to handle for the defendant railroad companies, loaded and empty cars on which the terminal allowance payable to the plaintiff in accordance with the tariffs of the railroad defendants amounts in the aggregate to not less than Four Thousand Five Hundred Dollars ($4,500) per annum on interstate transportation. Unless the order of the Commission be set aside and the defendant railroad companies be required to withdraw their cancelling tariffs, plaintiff will be compelled to perform the service of transporting from the interchange track the empty car to and the loaded car from the point of loading, and the inbound loaded car, from the interchange track, to and the empty car from the point of unloading to interchange tracks with the defendant railroad companies, for which transportation plaintiff will be compelled to assume an expense in excess of 90 cents per car more than if said terminal allowances were not cancelled, amounting in the aggregate excess to more than Four Thousand Five Hundred Dollars ($4,500) per annum, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiff is remediless in the premises at law, and relievable only in a court of equity, plaintiff prays that a preliminary or interlocutory order or injunction be entered, restraining and suspending the enforcement, operation, and execution of the said order of the Interstate Commerce Commission of July 11, 1935, until final determination of this cause, and that upon the final hearing herein a decree be entered

298 perpetually enjoining, suspending, annulling and setting aside the enforcement, operation, and execution of said order.

Plaintiff further prays that a preliminary or interlocutory order or injunction be entered, requiring the railroad defendants, and each of them, to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission and suspending the cancellation of the terminal allowances now being paid plaintiff until final determination of this cause and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the said tariffs, and requiring the said defendants to file new tariffs restoring the terminal allowances in effect on July 10, 1935, on interstate traffic handled by the plaintiff at said plant in Houston, Texas, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of July 11, 1935, and to restore the status quo of July 10, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad defendants, and each of them, to vacate, annul, and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of July 10, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiff further prays, that your Honors will
299 direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the defendants herein named, in the manner provided in the Acts of Congress and plaintiff will ever pray.

Respectfully submitted.

LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
1522 First National Bank Bldg., Chicago, Ill.,
Solicitors for Plaintiff.

[*Duly sworn to by Charles Ervin; jurat omitted in printing.*]

300 *Appendix A*

[Omitted. Printed side page. 22 ante.]

301 Appearances of Counsel omitted.

368 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

The Texas Company Terminal Allowance at Houston, Texas. Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services. Submitted October 17, 1934. Decided July 11, 1935.

Carriers' obligations under their interstate line-haul rates found not to extend beyond the present points of interchange, and payment of an allowance to the industry for service beyond such points found unlawful.

Same appearances as in the original report.

Twenty-Fourth Supplemental Report of the Commission

Division 6, Commissioners McNanamy, Lee, and Miller.

By Division 6:

In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced concerning the payment of allowances to industries for performing spotting service at their industrial plants, or the performance of such service by respondents in lieu of payment. This supplemental report deals with the propriety and lawfulness
369 of an allowance paid by the respondent carriers which serve the Texas Company for the performance by the latter of spotting service within its plant at Houston, Texas.

The Texas Company has owned this refinery since 1928. Previous to that time it was operated by the Galena Signal Oil Company. The refinery was served exclusively by the Texas and New Orleans Railroad Company for a number of years, and since July 1931, it has been served also by the Port Terminal Railroad Association. The latter is a joint facility organization of the Texas and New Orleans Railroad Company, the Missouri Pacific Railroad Company, the Gulf, Colorado and Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company of Texas, and the Burlington-Rock Island Railroad Company. The history and operations of the Port Terminal are described in Operation Over Tracks of Houston P. T. R. Asso., 150 I. C. C. 402.

The Port Terminal tracks cross the northern end of the Texas Company property and connect with an industrial track extending southward about one mile to two tracks used by the Port Terminal for the delivery and receipt of cars. The T. & N. O. enters the property from the west side. It delivers and receives cars on two tracks located contiguous to but separated from the tracks used by the Port Terminal for interchange.

The Texas Company owns 17 tracks aggregating about 22,500 feet in length. These tracks are grouped and occupy a small section in the south end of the industrial property near the Houston ship channel. There are about 15 spotting locations within the plant, all closely adjacent to the interchange tracks used by the two carriers, and it requires only a slight additional switching movement beyond that now performed by the carriers to place the cars for loading or unloading. At all times when the refinery has been in opera-
370 tion under the ownership of the Texas Company the switching has been performed by that company's small locomotive using a switching crew of only two men.

In May, 1923, the Galena Signal Oil Company then operating this plant made application to the T. & N. O. for a switching allowance. An investigation made at that time developed a cost of 65 cents per loaded car, and an allowance of this amount was granted to the Galena Company effective December 26 of that year. Upon applica-

tion by the Galena Company, this was increased after a study made in March 1925 to 90 cents per car. After the Texas Company acquired the property December 1, 1928, the refinery was reconstructed and therefore not operated until August, 1929. During the above period the industry performed part of the switching and part was performed by the T. & N. O. On December 8, 1929, the T. & N. O. began the payment of the allowance of 90 cents per loaded car to the Texas Company.

When the Port Terminal connected with the plant, the Texas Company, because of interference with plant operations and fire hazards, refused to permit the entry of the Port Terminal locomotives within the plant to perform spotting service. It was therefore necessary for the member lines comprising the Port Terminal to meet the competition of the T. & N. O. by granting an allowance of the same amount, which became effective by tariff publication of the respective lines comprising the Port Terminal, except the T. & N. O., September 17, 1931.

From an exhibit of record the track layout at this plant appears to be comparatively simple, and the tracks are in condition to allow respondents to operate thereover. There appears to be no reason why either the T. & N. O. or the Port Terminal could not perform the spotting service so far as the physical conditions are con-
371 cerned. The record is persuasive that the Texas Company does not desire the performance of any further service by respondents than it now receives.

We have recognized in similar cases that an industry by the operation of its own power is afforded a superior switching convenience as compared with the service received by industries where the switching service is performed by carriers. Riter-Conley Mfg. Co. v. Director General, 58 I. C. C. 327. By the operation of its locomotive, the Texas Company obtains a service superior to that which it would receive if the cars were delivered or received directly by the connecting carriers at the point of loading or unloading, and the switching operation can thus be carried on to suit the industry's convenience. Many of the Texas Company's competitors receive only the switching service normally accorded to industries by carriers which serve them. Such switching ordinarily involves only one placement of a car, the movement being made without interference and over trackage suitable for the service. Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., 270 U. S. 260, citing Downey Ship Building Corp. v. Director General, 60 I. C. C. 543, and Car Spotting Charges, 34 I. C. C. 609.

The tariffs of the respondent carriers properly construed contemplate only the delivery or receipt of cars at a reasonable point. We find that the transportation service which it is the duty of the respondent carriers to perform for the Texas Company under the interstate line-haul rates, or switching charges begins and ends at the interchange tracks described of record, which are reasonably

convenient; that the service performed by the Texas Company within its plant beyond said interchange tracks is a plant service which it is not the duty of said carriers to perform. We further find that by the payment of an allowance for such service the respondent
372 carriers provide the means by which the Texas Company enjoys a preferential service not accorded to shippers generally, and refund or remit a portion of the rates or charges collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

An appropriate order will be entered.

ORDER

At a Session of the Interstate Commerce Commission, Division 6, held at its office in Washington, D. C., on the 11th day of July A. D. 1935.

The Texas Company Terminal Allowance. Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses. Part II, Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by the Texas and New Orleans Railroad Company, the Missouri Pacific Railroad Company, the Gulf, Colorado and Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company of Texas, and the Burlington-Rock Island Railroad Company, to The Texas Company for performance by the latter of spotting service within its plant at Houston, Texas, and the Commission having under date of May 14, 1935, made and filed a report, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof, made and filed a supplemental
373 report containing its findings of fact and conclusions with respect to the payments made to The Texas Company, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by such payments, the above-named respondent carriers violate the Interstate Commerce Act, as set forth in the above-mentioned reports:

It is ordered, That the Texas and New Orleans Railroad Company, the Missouri Pacific Railroad Company, the Gulf, Colorado and Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company of Texas, and the Burlington-Rock Island Railroad Company be, and they are hereby, notified and required to cease and desist on or before September 3, 1935, and thereafter to abstain from such unlawful practice.

By the Commission, Division 6.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

374 In United States District Court

No. 692 Equity

[Title omitted.]

Order convening three judge court and directing defendants to show cause why injunction should not issue

Filed August 13, 1935

On consideration of the above entitled cause it is ordered, that the application for a Preliminary Injunction herein, be heard in the Court Room of the United States District Court at New Orleans, Louisiana, on Monday the 19th day of August 1935, at 10:00 o'clock A. M., before a statutory Court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said Court to consist of Honorable Rufus E. Foster, Circuit Judge, and Honorables Wayne G. Borah and T. M. Kennerly, District Judges, which is hereby convened; and that the defendants be ordered then and there to show cause, if any they can, why the Preliminary Injunction prayed for should not issue.

Houston, Texas, August 13, 1935.

T. M. KENNERLY, *Judge.*

[File endorsement omitted.]

375 In United States District Court

In Equity No. 692

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935, at New Orleans

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 38 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, sec. 45a), I hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of myself, as its counsel, in the above-entitled suit.

INTERSTATE COMMERCE COMMISSION.
By DANIEL W. KNOWLTON,
Chief Counsel.

376 [File endorsement omitted.]

377 In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

Filed August 19, 1935, at New Orleans

In Equity No. 692

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving
378 and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XIV, inclusive, of the bill of complaint, the Commission admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph VI of the bill of complaint, and the Twenty-fourth Supplemental Report and order dated July 11, 1935, referred to in said paragraph VI, said order being mentioned also in paragraph III of the bill of complaint, copies of which are attached to and made parts of the bill of complaint as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether certain practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers,
were in violation of the Interstate Commerce Act; and the
379 Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in and

by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein, by the counsel of said parties; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

380 The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of July 11, 1935, was not made or entered, either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph XII of the bill of complaint, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, in making said order of July 11, 1935, it either exceeded its authority or acted arbitrarily, as alleged in paragraph XIII of the bill of complaint.

The Commission specifically denies that, unless said order of July 11, 1935, is set aside, plaintiff will suffer irreparable loss and injury, as alleged in paragraph XIV of the bill of complaint.

Except as herein expressly admitted, the Commission denies
381 the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and order, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION.
By DANIEL W. KNOWLTON,
Chief Counsel.

[*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

382 [File endorsement omitted.]

383 In United States District Court

In Equity No. 692

[Title omitted.]

Interlocutory injunction

Filed at New Orleans, August 19, 1935

The plaintiff having heretofore filed its Bill of Complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 11th day of July 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, and the said order being effective on the 3rd day of September 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the Court herein;

And the Honorable T. M. Kennerly, Judge of the District Court of the United States for the Southern District of Texas, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determine said application for said inter-

384 locutory injunction, two other judges, namely, Honorable Rufus E. Foster, United States Circuit Judge and Honorable Wayne G. Borah, United States District Judge;

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Monday, the 19th day of August 1935, was given to the above named respondents, to the Attorney General of the United States and to the Interstate Commerce Commission:

It further appearing from the Bill of Complaint that defendant, The Atchison, Topeka and Santa Fe Railway Company, filed certain tariff schedules, for the account of the defendant Gulf, Colorado and Santa Fe Railway Company, to become effective August 25, 1935, and that defendants, Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company, The International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway

Company, Missouri-Kansas-Texas Railroad Company of Texas, and Burlington-Rock Island Railroad Company, have filed certain tariff schedules, to become effective September 3, 1935, in compliance with the aforesaid order of the Commission, whereby each of said defendants will cancel the allowance which has been paid plaintiff for many years last past as compensation for transportation services under paragraph (13) of Section 15 of the Interstate Commerce Act; and it appearing that the plaintiff in order to send and receive its shipments will be compelled to perform said transportation services without compensation after said tariffs are allowed to become effective on said dates, to the irreparable damage of said petitioner; and that the effective dates of such tariffs should be suspended pending the outcome of the matters in controversy in this proceeding:

And the court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises, and upon hearing:

385 Now, therefore, it is ordered that during the pendency of this matter the United States of Amercia and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered 11th day of July 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services insofar as the same apply to petitioner, The Texas Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the Court.

It is further ordered that the operation of the aforesaid tariff schedules filed by defendant, The Atchison, Topeka and Santa Fe Railway Company, for the account of the defendant, Gulf, Colorado and Santa Fe Railway Company, to become effective August 25, 1935, and schedules filed by defendants, Texas and New Orleans Railroad Company, Missouri Pacific Railroad Company, The International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, Missouri-Kansas-Texas Railroad Company of Texas, and Burlington-Rock Island Railroad Company, to become effective September 3, 1935, cancelling the aforesaid allowances to plaintiff be, and each of them is, hereby suspended and set aside, pending the further order of this Court.

Plaintiff shall immediately execute and file a bond in the sum of Five Thousand ($5,000.00) Dollars, to be approved by one of the Judges of this Court, conditioned that plaintiff will pay to the Defendants such sum as this Court may determine is proper if this interlocutory injunction is dissolved.

By the court.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

AUGUST 19, 1935.

[File endorsement omitted.]

44090—38——40

386 In United States District Court

In Equity No. 692

[Title omitted.]

Answer of United States of America

Filed Sept. 9, 1935

United States of America, one of the above-named defendants, for answer to the bill of complaint filed herein against it says:

I

United States admits that the facts alleged in paragraphs numbered I, II, and III of the bill are true, except that it denies the statement in said paragraph III that the allowance therein mentioned is for services and facilities connected with the transportation of property or for the furnishing of instrumentalities used in such transportation, within the meaning of the Interstate Commerce Act.

II

United States denies the allegations contained in paragraphs IV and V of the bill, except that it admits that the defendant carriers have published and joined with other carriers in publishing and filing rates for the transportation of property to and from points on their lines, including plaintiff's plant; admits that plaintiff performs
387 the movement of loaded and empty cars from interchange tracks of defendant carriers at the gates of plaintiff's plant to and from points of unloading and loading within said plant; and admits that the defendant carriers publish the tariffs described in said paragraph V, purporting to compensate plaintiff for performance of said movement of cars; but United States denies that said switching and movement of cars by plaintiff within its private grounds and plant constitutes transportation service within the meaning of the Interstate Commerce Act, denies that defendant carriers may perform said service for plaintiff without charge in addition to their line-haul rates, and denies that said defendant carriers may pay any allowance out of said line-haul rates to plaintiff for performing said switching and movement of cars; and United States alleges that said switching and movement of cars is a plant service, as found by the Interstate Commerce Commission in its report, which is attached as Appendix B to the bill of complaint, to which report reference is hereby made.

III

United States admits the truth of the allegations contained in paragraphs numbered VI, VII, VIII, and IX of the bill, except that

it denies the suggestion alleged in said paragraph VII that the evidence heard by the Interstate Commerce Commission on May 16 to 19, 1932, constitutes all the evidence heard and considered by the Commission in connection with the plaintiff and its movement of cars within its plant at Houston, Texas.

IV

Answering paragraph X of the bill, United States says that it has no knowledge as to whether, at the hearing in this case, plaintiff will tender a certified copy of the record before the Interstate Commerce Commission out of which its said order of July 11, 1935, was issued, and, therefore, neither admits nor denies said allegation.

388

V

United States denies each and every allegation contained in paragraphs XI and XII of the bill.

VI

United States denies the allegations contained in paragraph XIII of the bill, except that it admits that the annual report of the Interstate Commerce Commission of 1905 to Congress contained the language quoted in said paragraph; and admits further that the Interstate Commerce Act was amended in the particulars set forth in said paragraph XIII.

VII

United States denies the allegations contained in paragraph XIV of the bill, and particularly denies that plaintiff will suffer irreparable loss or injury, or any legal damage whatever, if said order of the Commission is not enjoined and annulled.

Further answering the bill of complaint, United States particularly denies the allegation in the prayer thereof that plaintiff is without remedy at law and is relievable only in a court of equity, and alleges that plaintiff has a complete and adequate remedy at law as well as a remedy in equity.

VIII

Except as herein expressly admitted, United States denies each and every allegation contained in the bill of complaint and in the several paragraphs and subdivisions thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill

of complaint dismissed with costs to the plaintiff, and that
389 it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

ELMER B. COLLINS,
Special Assistant to the Attorney General.
JOHN DICKINSON,
Assistant Attorney General.
DOUGLAS W. MCGREGOR,
United States Attorney.

390 [Duly sworn to by Elmer B. Collins; jurat omitted in printing.]

[File endorsement omitted.]

391 In United States District Court

In Equity No. 692

[Title omitted.]

Stipulation

Filed September 13, 1935

In the above entitled and numbered cause, it is stipulated by and between plaintiff and defendant Railroad Companies (and Trustees where Trustees are defendants) that the time within which said Railroad defendants (or Trustees, if any) may plead or answer shall be and is hereby extended for a period of thirty days, but not to extend in any event thirty days beyond this 27th day of August 1935.

John S. Burchmore, Solicitors for Plaintiffs; Terry Cavin and Mills, for The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; H. H. Larimore, for Missouri Pacific Railroad Company (L. W. Baldwin and Guy H. Thompson, Trustees); The International-Great Northern Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees); The Beaumont, Sour Lake & Western Railway Co., (L. W. Baldwin and Guy A. Thompson, Trustees); The St. Louis, Brownsville and Mexico Railway Co. (L. W. Baldwin & Guy A. Thompson, Trustees); J. H. Barwise and Fred L. Wallace (N. Y.), for Burlington-Rock Island R. R. Co.; J. H. Tallichet, Texas and New Orleans R. R. Co and Missouri-Kansas-Texas, R. R. Co. of Texas, Solicitors for Defendants.

392 [File endorsement omitted.]

393 In United States District Court

No. 692. In Equity

[Title omitted.]

Answer of defendant, Texas and New Orleans Railroad Company to Plaintiff's original bill of complaint

Filed September 25, 1935

Comes now Texas and New Orleans Railroad Company, one of the defendants herein, and for answer to plaintiff's oirginal bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear
394 solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff, before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

J. H. TALLICHET,
Solicitor for Texas and New Orleans Railroad Company,
Defendant.

[File endorsement omitted.]

395 In United States District Court

No. 692. In Equity

[Title omitted.]

Answer of defendant, Gulf, Colorado and Santa Fe Railroad Company, to plaintiff's original bill of complaint

Filed September 27, 1935

Comes now Gulf, Colorado and Santa Fe Railway Company, one of the defendants herein, and for answer to plaintiff's original Bill of Complaint, would show to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII; VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It avers that the matters and things alleged and set forth in Sections XI, XII, and XIII of the bill bear solely on a controversy between plaintiff and defendant, United States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer,

396 it alleges the facts to be that the allowances made by it and described in the report of the Interstate Commerce Commission in Ex Parte 104, Part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost Gulf, Colorado and Santa Fe Railway Company to perform the same; that when said allowances were published in the tariff described in said bill, or in prior tariffs, this

defendant believed and yet believes that it was its duty as a common carrier to perform the service, for which said allowances were made, and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff, before the Interstate Commerce Commission, in said proceedings, known as Ex Parte 104, Part II.

Wherefore, premises considered, defendant, Gulf, Colorado and Santa Fe Railway Company, prays that the court enter such decree or decrees herein, as the facts may warrant, and as equity may require.

TERRY, CAVIN & MILLS,
G. B. ROSS,
FRANKLIN & BLANKENBECKER,
Attorneys for Gulf, Colorado and Santa Fe Railway Company, Defendant.

[File endorsement omitted.]

397 In United States District Court

No. 692. In Equity.

[Title omitted.]

Answer of defendant Missouri-Kansas-Texas Railroad Company of Texas to plaintiff's original bill of complaint

Filed September 25, 1935

Comes now Missouri-Kansas-Texas Railroad Company of Texas, one of the defendants herein, and for answer to plaintiff's original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely

on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party,
398 and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

J. H. TALLICHET,
Solicitor for Missouri-Kansas-Texas Railroad Company of Texas, Defendant.

[File endorsement omitted.]

399 In United States District Court

No. 692. In Equity

[Title omitted.]

Answer of defendant Burlington-Rock Island Railroad Company to plaintiff's original bill of complaint

Filed September 25, 1935

Comes now Burlington Rock-Island Railroad Company, one of the defendants herein and for answer to plaintiff's original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said Bill.

II

It admits the allegations of Section IV of said bill but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty

does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party,
400 and that it should not be required to admit or deny said allegations.

If required to answer, it alleges the facts to be that the allowances made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff, before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

FRED L. WALLACE,
Solicitor for Burlington-Rock Island Railroad Company,
Defendant.

[File endorsement omitted.]

401 In United States District Court

In Equity No. 692

[Title omitted.]

Answer of Missouri Pacific Railroad Company et al

Filed September 28, 1935

Come now the above named defendants, and each of them, and for answer to plaintiff's original bill of complaint represents and show to the Court:

I

They admit the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

They admit the allegations of Section IV of said bill but with the qualification that they deny that it is their duty as common carriers to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and allege that their said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

402 They represent to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, The United States of America, in which these defendants are not necessary parties and that they should not be required to admit or deny such allegations. If required to answer to said sections, they allege the facts to be that the allowances made by them, or any of them, and described in the reports of the Interstate Commerce Commission in Ex Parte 104 Part 2, were and are no more than the cost to plaintiff of performing the described service and less than what it would have cost these defendants, or any of them, to perform the same; that when said allowances were published in the tariffs described in said bill or any preceding tariffs, these defendants believed and yet believe that it was their duty as common carriers to perform the services for which said allowances were made; and that there was, before the Interstate Commerce Commission in said Ex Parte 104, Part 2, no evidence or no substantial evidence to the contrary or to the effect that the duty aforesaid was that of plaintiff.

Premises considered, these defendants severally pray that the Court may enter such decree herein as the facts may warrant and as equity may require.

H. H. LARIMORE,
R. H. KELLEY,
Solicitor for said Defendants.

[File endorsement omitted.]

403 *Opinion.*

Filed February 24, 1937.

[Omitted. Printed side page. 485 ante.]

411 *Findings of fact and conclusions of law*

Filed May 1, 1937

[Omitted. Printed side page. 136 ante.]

416 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 692

THE TEXAS COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA; TEXAS AND NEW ORLEANS RAILROAD COMPANY; MISSOURI PACIFIC RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES); THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS; BURLINGTON-ROCK ISLAND RAILROAD COMPANY, DEFENDANTS; INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

Filed May 1, 1937

The above entitled cause came on for final hearing upon petition for permanent injunction and having been heard by a court of three judges, organized pursuant to the statute, and the argument and briefs of counsel for all parties having been fully heard and considered, and the court having concluded, for the reasons set forth in its written opinion filed herein on February 24, 1937, that the relief prayed should be granted;

It is, therefore, ordered, adjudged, and decreed that the enforcement, operation, and execution of the order of the Interstate Commerce Commission, entered July 11, 1935, and entitled The Texas Company Terminal Allowance Ex Parte No. 104 Practices of Carriers Affecting Operating Revenues or Expenses Part II, Ter-
417 minal Services, and directed against the Texas and New Orleans Railroad Company, the Missouri Pacific Railroad Company, The Gulf, Colorado and Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company of Texas, and the Bur-

lington-Rock Island Railroad Company, respondents in said proceeding, are hereby permanently enjoined and said order is hereby set aside and annulled.

This 1st day of May 1937.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

[File endorsement omitted.]

418 In United States District Court

In Equity No. 692 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

To: ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY:

You are hereby invited to join the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, anulling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
419 ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 10th day of June 1937.

CHARLESTT WOODS,
Attorney for Atchison, Topeka & Santa Fe Railway Company.

[File endorsement omitted.]

420 In United States District Court

In Equity No. 692 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

To: INTERNATIONAL GREAT-NORTHERN RAILROAD COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES):

You are hereby invited to join the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCBREGOR,
United States Attorney.

421 ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12 day of June 1937.

H. H. LARIMORE,
Attorney for International-Great Northern Railroad Company
(L. W. Baldwin and Guy A. Thompson, Trustees.)

[File endorsement omitted.]

422 In United States District Court

In Equity No. 692 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

To: ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES):

You are hereby invited to join the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.

423 ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 12 day of June 1937.

H. H. LARIMORE,
Attorney for St. Louis, Brownsville and Mexico Railway Company,
(L. W. Baldwin and Guy A. Thompson, Trustees.)

[File endorsement omitted.]

424 In United States District Court

In Equity No. 692 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

To BURLINGTON-ROCK ISLAND RAILROAD COMPANY:

You are hereby invited to join the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.

425 ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel, Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 11 day of June 1937.

THOMPSON & BARWISE,
FRED L. WALLACE,
Attorney for Burlington-Rock Island Railroad Company.

[File endorsement omitted.]

426 In United States District Court

[Title omitted.]

In Equity No. 692 (Houston Division)

Summons and severance

Filed June 19, 1937

To GULF, COLORADO & SANTA FE RAILWAY COMPANY:

You are hereby invited to join the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an

appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.

427 ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 11 day of June 1937.

TERRY, CAVIN & MILLS,
G. B. ROSS,
Attorney for Gulf, Colorado & Santa Fe Railway Company.

[File endorsement omitted.]

428 In United States District Court

In Equity No. 692 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

To Missouri-Kansas-Texas Railroad Company of Texas:

You are hereby invited to join the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annulling, and enjoining the enforcement of the order of the Interstate Commerce Commission described in the petition in the above-entitled cause, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal

for a reversal of said final decree of the District Court without joining you.

June 7, 1937.

DOUGLAS W. McGREGOR,
United States Attorney.

429 ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this day of June 1937.

JOSEPH M. BRYSON,
Attorney for Missouri-Kansas-Texas Railroad Company of Texas.

430 [File endorsement omitted.]

431 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 693

GULF REFINING COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA; TEXAS AND NEW ORLEANS RAILROAD COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY, DEFENDANTS

Bill of complaint

Filed August 12, 1935

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas, Houston Division:

Gulf Refining Company, a corporation, presents this its bill of complaint against United States of America; Texas and New Orleans Railroad Company; and The Kansas City Southern Railway Company, and thereupon respectfully says:

I

Plaintiff, Gulf Refining Company, is a corporation organized and existing under the laws of the State of Texas, and having its
432 principal office at Houston, Texas, in the Southern District of Texas, Houston Division. Plaintiff is engaged in the re-

fining of petroleum and the production of various products therefrom, with refinery and plant at Port Arthur, Texas, from which it distributes its products by shipment in carload lots, by railroad, in interstate commerce, to various states of the United States, other than Texas. In the conduct of its business, plaintiff receives carload shipments of various commodities, moving in interstate commerce, by railroad, to its said plant at Port Arthur, Texas, from points of origin outside of the State of Texas.

II

Defendants, Texas and New Orleans Railroad Company, and The Kansas City Southern Railway Company, hereinafter sometimes for convenience referred to collectively as defendant carriers, are corporations organized and existing under the laws of various states of the United States, both of whom are qualified to do business and are doing business in the States of Texas and have lines of railroad within, or extending into, the said Southern District of Texas, Houston Division.

Each of said defendant carriers is engaged in the transportation of property by railroad in interstate commerce, and, as such, is subject to the provisions of an Act of Congress entitled "An Act to Regulate Commerce," and approved February 4, 1887, and all acts supplemental thereto or amendatory thereof, being the Interstate Commerce Act.

Said carriers receive at points of origin on their lines of railroad, as well as from connecting carriers, carload freight for transportation to and delivery at plaintiff's aforesaid refinery at Port Arthur, Texas, and in like manner receive freight from plaintiff at its
433 said plant for transportation to destinations on their own lines or the lines of the other carriers, all in interstate commerce.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913, to enjoin, set aside, annul, suspend, and restrain the enforcement, operation, and execution of an order of the Interstate Commerce Commission, entered July 11, 1935, in its docket, Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services; and to enjoin and restrain the said defendant carriers from the cancellation of tariffs filed with the Interstate Commerce Commission authorizing and providing for an allowance of 90 cents per loaded car for services and facilities connected with the transportation of property and for the furnishing of instrumentalities used in such transportation at plaintiff's aforesaid plant at Port Arthur, Texas, alleged to be required by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel, or in any manner depart from the allowances

for transportation service set forth in tariffs on file with the Interstate Commerce Commission for services and facilities in transportation at plaintiff's aforesaid plant at Port Arthur, Texas, or to make any effort to modify or change said tariffs in order to comply with the requirements of the said order, as more fully hereinafter set forth, and to set aside and hold for naught any and all acts of said defendant carriers performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated July 11, 1935.

434 IV

Said defendant carriers by lawful tariffs, on file with the Interstate Commerce Commission, have published and joined with other carriers in publishing rates and charges for the transportation of property to and from the spurs, sidings, tracks, and loading and unloading points at the plant of the plaintiff at Port Arthur, Texas, which rates and charges so filed and established contemplate the placement of the empty cars at the place of loading and the removal of the loaded cars therefrom and transportation over the lines of the defendants and their connections to consignees at final destination of said shipments, and also, in like manner, contemplate the placing of the inbound loaded cars at the final point of unloading in the plant of the plaintiff and the removal of the empty cars therefrom.

Plaintiff demanded of said defendant carriers that they perform their duty under the law as set forth in paragraph IX hereof, by transferring empty and loaded cars to and from loading and unloading points in plaintiff's said plant. The defendant railroad companies, in accordance with the requirements of the law, and performing their duty under the law, elected to have plaintiff perform the terminal services at its said plant. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between interchange tracks and points of loading and unloading in its said plant.

V

435 Texas and New Orleans Railroad Company now has, and for several years has had, on file with the Interstate Commerce Commission, in accordance with the provisions of Section 6 of the aforesaid Interstate Commerce Act, its Terminal Switching Tariff No. 773, I. C. C. No. 1465, which requires and authorizes the payment to the plaintiff of 90 cents per car as compensation for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's plant at Port Arthur, Texas, and track connection with the Texas and New Orleans Railroad at West Port Arthur, Texas. Said tariff was issued effective April 3, 1924.

Said defendant The Kansas City Southern Railway Company is the successor of Texarkana & Fort Smith Railway Company, which issued, effective March 31, 1924, and filed with the Interstate Commerce Commission, in accordance with said provisions of Section 6 of the aforesaid Act to Regulate Commerce, its Terminal Switching Tariff No. 2880, I. C. C. No. 158, authorizing and requiring the payment to the plaintiff of 90 cents per car for services performed and facilities furnished in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks of the plaintiff in its said plant and track connections of said carrier at Port Arthur, Texas, and stating that this allowance included the movement and placement of a loaded car for unloading and the return of the empty car, or the movement and placement of an empty car for loading and return of same loaded. Said allowance has been paid by the said successor, The Kansas City Southern Railway Company, since it assumed operation of the line of railroad formerly operated by said Texarkana & Fort Smith Railway Company.

The amount of such allowances is less than the cost to the
436 plaintiff for performing the aforesaid service, and is less than it would cost the said defendant railroad carriers, or either of them, to perform the service with their own engines and employees. Such allowances, therefore, are not in excess of just and reasonable allowances and are lawful under the provisions of paragraph 13 of Section 15 of the said Act to Regulate Commerce.

VI

On July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as Ex Parte 104, and assigned the same for hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled Part II, Terminal Services of Class I Carriers. By said notice the Commission defined "in scope and restriction" that part of the general inquiry as intended to establish facts concerning various services, charges, and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which

such services reach beyond the carriers' terminals to particular
437 locations on private track sidings, industrial plant tracks and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a hearing at Galveston, Texas, May 16 and 17, 1932. At these various hearings witnesses appeared, gave oral testimony, and filed documentary evidence purporting to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties but not by this plaintiff.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff and others, oral argument was had and thereupon the Commission issued its report and order, dated May 14, 1935, in which the Commission set forth its legal conclusions with respect to the general situation presented; various supplemental reports thereto were issued on said date; and further supplemental reports were later issued, among others, the Twenty-first Supplemental Report dated July 11, 1935, in which the Commission set forth its report and requirements with reference to the allowance paid to the plaintiff, as will more particularly hereinafter appear.

Said original report of the Commission was served in mimeographed form and later reported in Volume 209 of the Commission's official reports beginning at page 11. A true copy thereof is attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length.

A true copy of said Twenty-first Supplemental Report of the Commission and said order thereon of July 11, 1935, is at-
438 tached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

VII

The evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants, and their connections, in the transportation of carload freight at, to, and from Port Arthur, Texas, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an Examiner, during sessions at Galveston, Texas, May 16 and 17, 1932.

VIII

In alleged conformity with said order of July 11, 1935, the railroad defendants filed their several tariffs as follows:

The Kansas City Southern Railway Company Supplement 2 to its Terminal Switching Tariff No. 2880–A, I. C. C. 178, effective September 3, 1935, cancelling the aforesaid terminal allowance of 90

cents per car to plaintiff, as defined in the Commission's said Twenty-first Supplemental Report, "Appendix B" hereto.

Texas and New Orleans Railroad Company Terminal Switching Tariff No. 773–B, I. C. C. 270, effective September 3, 1935, cancelling said terminal allowance of 90 cents per car to plaintiff, as defined in the Commission's said Twenty-first Supplemental Report, "Appendix B" hereto.

439 IX

Section 1 of the Interstate Commerce Act, U. S. Code, title 49, Sec. 1, 41 Stat. L., 474, provides:

"(1) That the provisions of this Act shall apply to common carriers engaged in—

"(a) The transportation of passengers or property wholly by railroad, * * *.

"(2) The provisions of this Act shall also apply to such transportation of passengers and property * * * but only in so far as such transportation * * * takes place within the United States, * * *.

"(3) The term 'common carrier' as used in this Act shall include * * * all persons, natural or artificial, engaged in such transportation * * * as aforesaid as common carriers for hire. * * * The term 'railroad' as used in this Act shall include all * * * the road in use by any common carrier operating a railroad, whether owned or operated under a contract agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of * * * property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. * * *

"(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of * * * property to provide and furnish such transportation upon reasonable request therefor, * * *."

Section 6 provides:

"(1) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and
440 print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, * * * when a through route and joint rate have been established. * * * The schedules printed as aforesaid by any such

common carrier shall plainly state the places between which property * * * will be carried, * * * and shall also state separately all terminal charges, * * * and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee. * * * The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act. * * *

"(7) No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of * * * property, as defined in this Act, unless the rates, * * * and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of * * * property, or for any service in connection therewith, between the points named in such tariffs than the rates, * * * and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, * * * and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15, paragraph 13, provides:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and
441 allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Act approved February 19, 1903, as amended June 29, 1906 (U. S. Code, title 49, Sec. 41, 32 Stat. L. 847), provides, Section 1:

"The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, * * * and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce, and the Acts amendatory thereof whereby any such property shall by any device whatever be trans-

ported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. * * * Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act."

442

X

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of July 11, 1935, ostensibly was issued.

XI

Inasmuch as the order of July 11, 1935, in alleged conformity with which the tariffs referred to in paragraph VIII hereof were filed, canceling the terminal allowances to the plaintiff is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of, will not grant full measure of relief to this plaintiff, unless all action which has been taken by the individual railroad defendants be set aside and held for naught, thereby restoring and making effective the lawful terminal allowances in effect on July 10, 1935.

XII

The said order of July 11, 1935, as above set forth, is unlawful and void in the following respects:

(1) The Commission was without authority, either in law or in fact, to make the said order.

(2) There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the interchange tracks described of record or remove the cars therefrom;

443 (b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by

which plaintiff enjoys a preferential service not accorded to shippers generally;

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for load at, and removal of loaded car from, point of loading, and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

(5) The evidence on which the order is based shows conclusively that the terminal allowances paid by the defendant railroad companies to plaintiff are for transportation services embraced within the services for which the defendant railroad companies publish, charge, and receive the rates named in their tariffs filed with the Interstate Commerce Commission; that the said terminal allowances are no more than just and reasonable and, being published in the tariffs of the defendant railroad companies, are just as binding upon the defendant railroad companies as are any rates named in their tariffs to be collected for the transportation of property by them in interstate commerce.

444 (6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant railroad companies in connection with the terminal allowances at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowances named in the tariffs of the defendant railroad companies is paragraph (7) of Section 6; and so long as the allowances are named in the tariffs of the defendants they must be paid. The record wholly fails to show any violation of Section 6, paragraph (7).

XIII

Further, plaintiff shows that prior to 1905 the question had arisen as to the Commission's power over allowances to shippers for services performed and facilities furnished by them for carriers subject to the Interstate Commerce Act. In its annual report to the Congress in 1905 the Commission said:

"Terminal roads, elevator charges and private cars.

"There is an important class of cases in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like property.

This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such preference may take the form of an excessive division to a terminal road owned by the shipper, the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one
445 shipper to another. It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We should hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the service can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public, if provided by the shipper himself. We do think, however, that the commission should be empowered in a case of this kind, to determine whether the allowance to the property owner is a just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Thereupon on June 29, 1906, 34 Statute 584, Section 1 of the Interstate Commerce Act was amended so that the term "railroad" should include—

"all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

The section was further amended so that the term "transportation" includes—

"all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration, icing, storing, and handling of property transported; and it shall be the duty of every carrier, subject to the provisions of this Act, to provide and furnish such transportation upon reasonable request therefor."

446 Section 6 was amended so as to require the schedules of rates filed by carriers to "state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed."

Section 6 was further amended by the addition of the following to paragraph (7): "Nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Section 15 was amended by the addition of the following paragraph:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The Commission has no power to prohibit defendant railroad companies from employing plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad companies to plaintiff for service and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

447 The Commission in its said order of July 11, 1935, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

XIV

Plaintiff has handled, and will continue to handle for the defendant railroad companies, loaded and empty cars on which the terminal allowance payable to the plaintiff in accordance with the tariffs of the railroad defendants amounts in the aggregate to not less than Eight Thousand Dollars ($8,000) per annum on interstate transportation. Unless the order of the Commission be set aside and the defendant railroad companies be required to withdraw their cancelling tariffs, plaintiff will be compelled to perform the service of transporting from the interchange track the empty car to and the loaded car from the point of loading, and the inbound loaded car, from the interchange track, to and the empty car from the point of unloading to interchange tracks with the defendant railroad companies, for which transportation plaintiff will be compelled to assume an expense in excess of 90 cents per car more than if said terminal allowances were not cancelled, amounting in the aggregate

excess to more than Eight Thousand Dollars ($8,000) per annum, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiff is remediless in the premises at law, and relievable only in a court of equity, plaintiff prays that a preliminary or interlocutory order or injunction be entered, restraining and suspending the enforcement, operation and execution of the said order of the Interstate Commerce
448 Commission of July 11, 1935, until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the enforcement, operation, and execution of said order.

Plaintiff further prays that a preliminary or interlocutory order or injunction be entered, requiring the railroad defendants, and each of them, to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission and suspending the cancellation of the terminal allowances now being paid plaintiff until final determination of this cause and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the said tariffs, and requiring the said defendants to file new tariffs restoring the terminal allowances in effect on July 10, 1935, on interstate traffic handled by the plaintiff at said plant in Port Arthur, Texas, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of July 11, 1935, and to restore the status quo of July 10, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad defendants, and each of them, to vacate, annul, and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of July 10, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

449 And your plaintiff further prays that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the defendants herein named, in the manner provided in the Acts of Congress, and plaintiff will ever pray.

Respectfully submitted.

LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
1522 First National Bank Bldg., Chicago, Ill.,
Solicitors for Plaintiff.

[*Duly sworn to by J. C. Beck; jurat omitted in printing.*]

449-A *Appendix A*

[Omitted. Printed side page. 22 ante.]

518 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

Gulf Refining Company Terminal Allowance. Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses.

Part II, Terminal Services. Submitted October 17, 1934. Decided July 11, 1935.

Service beyond the interchange tracks described of record found to be a plant service for which the carriers are not compensated in their interstate line-haul rates. Allowance found to be unlawful.

Same appearances as in the original report.

Twenty-First Supplemental Report of the Commission

Division 6, Commissioners McNanamy, Lee, and Miller.

By Division 6:

In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced concerning the payment of allowances to industries for performing spotting service at their industrial plants or the performance of such service by respondents in lieu of payment. This supplemental report pertains to the propriety and lawfulness of
519 an allowance paid by the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company to the Gulf Refining Company for spotting service performed by the latter company within its oil refining plant at Port Arthur, Texas.

The Gulf Company began operation of this refinery about 1902. Since that time the plant has been greatly enlarged and extensive construction work which increased its capacity was performed between 1921 and 1931. While the Gulf Company owns considerable land at this point, the operations which it is here necessary to consider are conducted in an area about 9,600 feet long, averaging about 4,800 feet in width. The principal refining and manufacturing operations are conducted in various plants which occupy space near the center of the property. This industrial area, hereinafter termed the main refinery section, contains several batteries of stills used in the refining of petroleum, paraffin plants, acid plants, an asphalt plant, reclamation yards, and several racks where tank cars are loaded or unloaded. About one-half mile southwest of the main refinery section is another section of the plant containing docks, warehouses, car shops, and machine shops. This portion will hereinafter be referred to as the dock section. About 50 industrial tracks, aggregating some 13 miles in length, extend to about 35 widely scattered locations where cars are spotted for loading or unloading, some of which have a capacity for the spotting of several cars at

one time. There are 15 or 20 locations where box cars are loaded or unloaded and 7 different racks for the loading of tank cars. One gasoline loading rack has a capacity for 18 tank cars and under normal conditions it has been necessary to place and remove cars at this rack as often as four times daily.

The portion of the Kansas City Southern which serves
520 this plant was formerly operated as the Texarkana & Fort Smith Railway Company. See Texarkana & F. S. Ry. Co. Control, 189 I. C. C. 253, 193 I. C. C. 521. The main track of the Kansas City Southern enters the Gulf Company property through a gate near the docks at the southwest corner and extends in a northwesterly direction to a point approximately 4,200 feet distant where it terminates near the main refinery section. Adjacent to this main track and on either side thereof are two sidings, each about 1,800 feet in length, which are in close proximity to the dock section and are used for interchange of cars between the Kansas City Southern and the Gulf Company. For the interchange of cars containing casing head gasoline the Kansas City Southern also uses several other tracks south of this point, about 400 feet outside the entrance to the plant.

The Texas & New Orleans main line parallels the entire length of the plant on the west side and a branch line diverges from the main line and extends through the main refinery section in a northeasterly direction to Port Arthur. Two sidings, each about one-half mile long and located on the right-of-way of this respondent in the approximate center of the main refinery section, are used for the interchange of cars between it and the Gulf Company. In serving the main refinery section the Texas & New Orleans has direct access to this portion of the plant which is bisected by its branch line tracks but has no means of reaching the dock section except by use of or crossing over the tracks of the Kansas City Southern. The latter carrier can serve directly the dock section and the portion of the main refinery section which lies east of the Texas & New Orleans branch tracks by the use of plant tracks, but has no means of reaching the portion of the main refinery section lying west of the
521 Texas & New Orleans tracks except by use of or crossing over the tracks of that carrier. The Gulf Company can reach all the spotting locations only by crossing or using tracks belonging to the respondent carriers. Whether the use of the tracks within the plant is governed by trackage agreements under contract or is a practice which developed with the growth of the plant is not shown of record.

All spotting service between the above described points of interchange and the points of loading and unloading within the plant is performed by locomotives owned by the Gulf Company. For this service respondents allow the Gulf Company 90 cents per loaded car.

Inbound shipments consist principally of those articles commonly used in the refining, manufacture, and shipment of petroleum and

its products. Outbound shipments consist of gasoline and oil in tank cars and other petroleum products such as grease, oil, and wax in box cars.

From the time the industry began operations until 1919 respondent carriers performed the service for which the allowance is now paid on traffic which they respectively handled. In February of that year the Gulf Company purchased a locomotive which was used for construction and intraplant switching service and also in performing some spotting. Due to increasing need of industrial locomotive service, a second was purchased in November 1922. The Kansas City Southern continued to perform some switching service at the Gulf Company plant until March 1924, using road-haul locomotives for that purpose. At times the service performed by that carrier required as much as four locomotive hours daily. From November 1922, until the allowance was granted in April 1924, except for a few days, the Texas & New Orleans maintained a switching
522 locomotive within the Gulf Company plant to perform spotting service on traffic handled by that carrier. During the times when both respondent carriers were performing some switching service at the plant, the Gulf Company performed the intraplant switching and a part of the spotting service. The respondent carriers at that time performed a part of the intraplant switching and made no charge therefor, considering this as an offset for some of the spotting service performed by the Gulf Company locomotives. This resulted in the indiscriminate use by the three parties performing the switching of the tracks of the Gulf Company and those of both respondent carriers located within the plant.

In Magnolia Petroleum Company Terminal Allowance, 209 I. C. C. 93, the inception of terminal allowances to oil refineries in Texas was discussed. It was shown that immediately upon learning that its competitor, the Texas & New Orleans, had granted an allowance to the Magnolia Petroleum Company, the Kansas City Southern volunteered to grant the "same concession" to the Gulf Company. As a result of this action and after some correspondence, officials of the Gulf Company and of the two respondent carriers conducted a joint cost study over a 10-day period beginning November 5, 1923. This study developed that the cost to the Kansas City Southern and the Texas & New Orleans for performing this spotting service would be $1.038 and 93 cents per loaded car, respectively. The Gulf Company accepted an allowance of 90 cents per loaded car which became effective by tariff publication of the Kansas City Southern on March 31, 1924, and of the Texas & New Orleans on April 3, 1924.

The record is convincing that due to the competitive situa-
523 tion as between the respondent carriers little, if any, consideration was given by either to its common-carrier obligations under the line-haul rates when granting this allowance.

As pointed out above, at no time has the Kansas City Southern or the Texas & New Orleans been able to reach all the spotting

locations in the plant except by the use of each other's tracks, and it must be recalled that the enlarged plant now contains a large number of spotting locations which were not in use when respondent carriers were performing a part of the service. The testimony indicates that when the respondent carriers were performing part of the switching service within the Gulf Company property there was no serious interference between the industrial locomotives and those operated by respondent carriers. At that time there was no proper division as between the spotting service and the intraplant switching, and strictly industrial service the two services being conducted on a reciprocal basis as between the respondent carriers and the Gulf Company. However, it appears that as the plant was enlarged, the Gulf Company for its own convenience relieved the respondent carriers from performing any service beyond the interchange points previously described. In a letter from the Kansas City Southern to the Gulf Company in connection with that carrier's offer to make an allowance, it was indicated that if the Kansas City Southern should attempt to perform the work within the Gulf Company plant undoubtedly interference with industrial operations would result. Respondents are under no legal obligation to perform spotting solely at the convenience of the oil company. Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29. If the respondent carriers were to perform the spotting service for which they pay an allowance such performance would require each of
524 them to assign a locomotive to the plant to operate practically under the complete direction and control of the Gulf Company. Carriers are obligated under their line-haul rates to perform service only to a reasonably convenient point of interchange and are not obligated under such rates to perform plant service, or service under the direction and control of an industry. See Terminal Allowance to St. Louis Coke & Iron Co., 85 I. C. C. 591; Stewart Furnace Co. v. Pennsylvania R. Co., 68 I. C. C. 528. By the allowance to the Gulf Company both respondent carriers provide a substantially greater service at the same rates than they furnished prior to the granting of the allowance, and the effect of the allowance is a reduction in the line-haul rates as to which there was no question of reasonableness at the time the allowance was granted. See American International Shipbuilding Corp. v. Pennsylvania R. Co., 57 I. C. C. 90, 93. Necessarily a shipper whose line-haul rates are reduced by such means receives a preferential treatment in comparison with shippers generally.

We find that the service performed beyond the interchange tracks described of record is a plant service; that the service for which the respondent carriers are compensated in their line-haul rates begins and ends at said interchange tracks; that the payment of an allowance for the performance of service beyond said interchange tracks provides the means by which the industry enjoys a preferential service not accorded to shippers generally; and that by such payment respondent carriers refund or remit a portion of the rates or

charges collected or received as compensation for the interstate transportation of property in violation of section 6 (7) of the act.

An appropriate order will be entered.

525 ORDER

At a Session of the Interstate Commerce Commission, Division 6, held at its office in Washington, D. C., on the 11th day of July A. D. 1935.

Gulf Refining Company Terminal Allowance Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses. Part II, Terminal Services.

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company to the Gulf Refining Company, for performance by the latter of spotting service within its plant at Port Arthur, Texas, and the Commission having under date of May 14, 1935, made and filed a report, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Gulf Refining Company, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the payment of said allowance the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company violate the Interstate Commerce Act as set forth in the above-mention reports:

526 It is ordered, That the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company be, and they are hereby, notified and required to cease and desist on or before September 3, 1935, and thereafter to abstain from such unlawful practice."

By the Commission, Division 6.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

527 In United States District Court

No. 693. Equity

[Title omitted.]

Order convening three Judge Court and directing defendants to show cause why injunction should not issue

Filed August 13, 1935

On consideration of the above entitled cause it is ordered that the application for a Preliminary Injunction, herein, be heard in the

Court Room of the United States District Court at New Orleans, Louisiana, on Monday, the 19th day of August, 1935, at 10 o'clock, A. M., before a statutory Court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said Court to consist of Honorable Rufus E. Foster, Circuit Judge, and Honorables Wayne G. Borah and T. M. Kennerly, District Judges, which is hereby convened; and that the defendants be ordered then and there to show cause, if any they can, why the Preliminary Injunction prayed for should not issue.

T. M. KENNERLY, *Judge.*

HOUSTON, TEXAS, *August 13, 1935.*

[File endorsement omitted.]

528 In United States District Court

In Equity. No. 693

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed August 19, 1935, at New Orleans

To the Honorable the Judges of Said Court:

In accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, sec. 45a), I hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of myself as its counsel, in the above-entitled suit.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

[File endorsement omitted.]

529 In United States District Court

In Equity No. 693

[Title omitted.]

Answer of Interstate Commerce Commission

Filed August 19, 1935, at New Orleans, La.

The Interstate Commerce Commission, intervening de-fendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission, for the purpose of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XIV, inclusive, of the bill of complaint, the Commission admits and alleges that it made
530 the original report dated May 14, 1935, referred to in paragraph IV of the bill of complaint, and the Twenty-first Supplemental Report and order dated July 11, 1935, referred to in said paragraph IV, said order being referred to also in paragraph III of the bill of complaint, copies of which reports and order, respectively, are attached to the bill of complaint as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether certain practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectively refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein, by the counsel of said parties, that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein, and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the
531 findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully

supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of July 11, 1935, was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph XII of the bill of complaint, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, in making said order of July 11, 1935, it either acted arbitrarily or exceeded its authority, as alleged in paragraph XIII of the bill of complaint.

The Commission specifically denies that, unless said order of July 11, 1935, is set aside, plaintiff will suffer irreparable loss and injury, as alleged in paragraph XIV of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations
532 herein, or with either the statements or conclusions of fact included in said original report of May 14, 1935, and in said Twenty-first Supplemental Report and order of July 11, 1935, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

[*Duly sworn to by Frank McManamy; jurat omitted in printing.*]
[File endorsement omitted.]

533 In United States District Court

In Equity. No. 693

[Title omitted.]

Interlocutory injunction

Filed August 19, 1935

The plaintiff having heretofore filed its bill of complaint praying for a permanent injunction against the United States of America

and each of the other respondents, individually and collectively, against the enforcement, operation, and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 11th day of July 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 3rd day of September 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the court herein;

And the Honorable T. M. Kennerly, Judge of the District Court of the United States for the Southern District of Texas, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determine said application for said interlocutory injunction, two other Judges, namely, Honorable Rufus E. Foster, United States Circuit Judge, and Honorable Wayne G. Borah, United States District Judge;

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Monday, the 19th day of August 1935, was given to the above named respondents, to the Attorney General of the United States and
534 to the Interstate Commerce Commission:

It further appearing from the Bill of Complaint that defendants, Texas and New Orleans Railroad Company and the Kansas City Southern Railway Company, have filed certain tariff schedules, to become effective September 3, 1935, in compliance with the aforesaid order of the Commission, whereby each of said defendants will cancel the allowance which has been paid plaintiff for many years last past as compensation for transportation services under paragraph (13) of Section 15 of the Interstate Commerce Act; and it appearing that the plaintiff in order to send and receive its shipments will be compelled to perform said transportation services without compensation after said tariffs are allowed to become effective on said date, to the irreparable damage of said petitioner; and that the effective date of such tariffs should be suspended pending the outcome of the matters in controversy in this proceeding;

And the court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises, and upon hearing:

Now, therefore, it is ordered that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 11th day of July 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to petitioner, Gulf Refining Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the court.

It is further ordered that the operation of the aforesaid tariff schedules filed by defendants, Texas and New Orleans Railroad Company and the Kansas City Southern Railway Company, to
535 become effective September 3rd, 1935, cancelling the aforesaid allowance to plaintiff be, and each of them is, hereby suspended and set aside, pending the further order of this court.

Plaintiff shall immediately execute and file a bond in the sum of FIVE THOUSAND ($5,000.00) DOLLARS, to be approved by one of the Judges of this Court, conditioned that plaintiff will pay to the defendants such sum as this Court may determine is proper if this interlocutory injunction is dissolved.

By the Court.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

August 19, 1935.

[File endorsement omitted.]

536 In United States District Court

In Equity No. 693

[Title omitted.]

Answer of the United States

Filed September 9, 1935

United States of America, one of the above-named defendants, for answer to the bill of complaint, filed herein against it says:

I

United States admits that the facts alleged in paragraphs numbered I, II, and III of the bill are true, except that it denies the statement in said paragraph III that the allowance therein mentioned is for services and facilities connected with the transportation of property or for the furnishing of instrumentalities used in such transportation, within the meaning of the Interstate Commerce Act.

II

United States denies the allegations contained in paragraphs IV and V of the bill, except that it admits that the defendant carriers have published and joined with other carriers in publishing and filing rates for the transportation of property to and from points on their lines, including plaintiff's plant; admits that plaintiff per-
forms the movement of loaded and empty cars from inter-
537 change tracks of defendant carriers at the gates of plaintiff's plant to and from points of unloading and loading within said plant; and admits that the defendant carriers publish the tariffs

described in said paragraph V, purporting to compensate plaintiff for performance of said movement of cars; but United States denies that said switching and movement of cars by plaintiff within its private grounds and plant constitutes transportation service within the meaning of the Interstate Commerce Act, denies that defendant carriers may perform said service for plaintiff without charge in addition to their line-haul rates, and denies that said defendant carriers may pay any allowance out of said line-haul rates to plaintiff for performing said switching and movement of cars; and United States alleges that said switching and movement of cars is a plant service, as found by the Interstate Commerce Commission in its report, which is attached as Appendix B to the bill of complaint, to which report reference is hereby made.

III

United States admits the truth of the allegations contained in paragraphs numbered VI, VII, VIII, and IX of the bill, except that it denies the suggestion alleged in said paragraph VII that the evidence heard by the Interstate Commerce Commission on May 16 and 17, 1932, constitutes all the evidence heard and considered by the Commission in connection with the plaintiff and its movement of cars within its plant at Port Arthur, Texas.

IV

Answering paragraph X of the bill, United States says that it has no knowledge as to whether, at the hearing in this case, plaintiff will tender a certified copy of the record before the Interstate Commerce Commission out of which its said order of July 11, 1935, was issued, and, therefore, neither admits nor denies said allegation.

538

V

United States denies each and every allegation contained in paragraphs XI and XII of the bill.

VI

United States denies the allegations contained in paragraph XIII of the bill, except that it admits that the annual report of the Interstate Commerce Commission of 1905 to Congress contained the language quoted in said paragraph; and admits further that the Interstate Commerce Act was amended in the particulars set forth in said paragraph XIII.

VII

United States denies the allegations contained in paragraph XIV of the bill, and particularly denies that plaintiff will suffer irreparable loss or injury, or any legal damage whatever, if said order of the Commission is not enjoined and annulled.

Further answering the bill of complaint, United States particularly denies the allegation in the prayer thereof that plaintiff is without remedy at law and is relievable only in a court of equity, and alleges that plaintiff has a complete and adequate remedy at law as well as a remedy in equity.

VIII

Except as herein expressly admitted, United States denies each and every allegation contained in the bill of complaint and in the several paragraphs and subdivisions thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the plaintiff, and that it
539 have the benefit of such other and further orders, decrees, or relief as may be just and proper.

ELMER B. COLLINS,
Special Assistant to the Attorney General.
JOHN DICKINSON,
Assistant Attorney General.
DOUGLAS W. MCGREGOR,
United States Attorney.

540 [*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

[File endorsement omitted.]

541 In United States District Court

In Equity No. 693

[Title omitted.]

Stipulation extending time to answer

Filed Sept. 13, 1935

In the above entitled and numbered cause it is stipulated by and between plaintiff and defendant Railroad Companies (and Trustees, where Trustees are defendants) that the time within which said Railroad defendants (or Trustees, if any) may plead or answer shall be, and is hereby, extended for a period of thirty days, but not to extend in any event thirty days beyond this 27th day of August 1935.

JOHN S. BURCHMORE,
Solicitors for Plaintiffs.
WM. E. DAVIS and ORGAIN CAROLL & BELL (N. Y.),
For Kansas City Southern Ry. Co.
J. H. TALLICHET,
Texas and New Orleans Railroad Company,
Solicitors for Defendants.

[File endorsement omitted.]

542 In United States District Court

No. 693. In Equity

[Title omitted.]

Answer of defendant Texas and New Orleans Railroad Company to plaintiff's original bill of complaint

Filed September 25, 1935

Comes now Texas and New Orleans Railroad Company, one of the defendants herein, and for answer to plaintiff's original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

543 It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

J. H. TALLICHET,
Solicitor for Texas and New Orleans Railroad Company.

[File endorsement omitted.]

544 In United States District Court

In Equity. No. 693

[Title omitted.]

Separate answer of defendant Kansas City Southern Railway Company

Filed September 26, 1935

Now comes the Kansas City Southern Railway Company, one of the defendants in the above entitled case, and for answer to the bill of complaint herein states:

1. Defendant denies that it owns a line of railroad in the State of Texas, but states that it operates a line of railroad in said state under lease, pursuant to authority duly granted and issued by the Interstate Commerce Commission. For the purposes of this suit defendant admits each and every other allegation contained in Sections I to III, inclusive, of the bill of complaint.

2. For answer to Section IV of the bill of complaint defendant admits that by lawful tariffs filed with the Interstate Commerce Commission it published and joined with other carriers in publishing rates and charges for the line-haul transportation of property to and from the plant of plaintiff at Port Arthur, Texas; that it filed with the Interstate Commerce Commission, pursuant to Section 6 of the Interstate Commerce Act, tariffs providing for a terminal allowance as alleged in Section IV of the bill of complaint;

545 and that prior to the issuance of the reports and orders of the Interstate Commerce Commission in its Docket Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, defendant had understood and believed that the aforesaid line-haul rates provided for the full compensation to defendant and other carriers for the placement of empty cars at the place of loading, and the removal of loaded cars therefrom, within said plant, and that it was required or permitted to either perform the service for which said allowance was published or to pay plaintiff an allowance for performing the same without a charge in addition to the line-haul rates; but, by reason of the aforesaid reports and orders of the Interstate Commerce Commission defendant neither admits nor denies the allegations contained in Section IV of the bill of complaint herein, except those expressly admitted, and demands proof thereof.

3. Answering Section V of the bill of complaint, defendant admits and alleges that the amount of the said allowance of the ninety cents per loeaded car is less than the cost to plaintiff of performing the service for which said allowance was made, and is less than it would have cost this defendant to perform said service with its own engines and employees, and that such allowance was therefore not in excess of a just and reasonable allowance.

4. Defendant admits the allegations contained in Section VI of the bill of complaint.

5. Defendant is informed and believes that the allegations contained in Section VII of the bill of complaint are correct, and therefore admits the same.

6. Defendant admits the allegations contained in paragraph VIII of the bill of complaint.

546 7. Defendant admits the allegations contained in paragraph IX of the bill of complaint.

8. Defendant has no information as to the allegations contained in paragraph X of the bill of complaint.

9. Defendant denies the matters and things set forth in Section XI of the bill of complaint in manner and form as alleged.

10. For answer to Section XII of the bill of complaint, defendant admits that the provisions for the allowance referred to therein were duly and lawfully published and on file with the Interstate Commerce Commission on and before July 11, 1935, pursuant to and in conformity with the provisions of the Interstate Commerce Act, and admits that the record and evidence before the Interstate Commerce Commission in its Ex Parte 104, Part II, wholly failed to show any violations of paragraph (7) of Section 6 of said Interstate Commerce Act by this defendant. Defendant further alleges, in answer to Section XII of the bill of complaint, that at the time of publishing the provisions for said allowance, and until reports and orders of the Interstate Commerce Commission in its proceeding known and designated as Ex Parte 104, Practices of Carriers Affecting Operating Revenues and Expenses, Part II, Terminal Services, defendant was of the opinion that it was either required or permitted to perform the service for which said allowance was paid without the exaction of charges in addition to the line-haul rates published by defendant and other railroads, but that in view of the reports and orders of the Interstate Commerce Commission, made after the hearing of evidence in the aforesaid proceeding, defendant neither admits nor denies the other allegations in Section VIII of the bill of complaint, but demands proof thereof.

11. Defendant admits the allegations in paragraph XIII of the bill of complaint, except the last paragraph thereof, which defendant denies.

547 12. For answer to Section XIV of the bill of complaint, defendant admits, upon information and belief, that plaintiff has handled, and will continue to handle for the defendant carriers,

loaded cars on which the terminal allowance, if paid in accordance with the tariffs formerly in effect on behalf of defendant carriers, would amount in the aggregate to not less than Eight Thousand ($8,000.00) Dollars per annum on interstate traffic. Defendant is not sufficiently advised as to the other matters and things alleged in Section XIV of the bill of complaint to enable it either to admit or deny the same, and it therefore demands proof.

Wherefore, having fully answered the bill of complaint herein, this defendant prays that it be discharged with its costs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
By F. H. MOORE,
H. E. DAVIS,
ORGAIN, CARROLL & BELL,
Its Solicitors.

[File endorsement omitted.]

548 *Opinion*

Filed February 24, 1937

[Omitted. Printed side page. 485 ante.]

556 Findings of fact and conclusions of law

Filed May 1, 1937

[Omitted. Printed side page. 136 ante.]

561 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 693

GULF REFINING COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA; TEXAS AND NEW ORLEANS RAILROAD COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY, DEFENDANTS; INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

Filed May 1, 1937

The above entitled cause came on for final hearing upon petition for permanent injunction and having been heard by a court of three judges, organized pursuant to the statute, and the argument and briefs of counsel for all parties having been fully heard and con-

sidered, and the court having concluded, for the reasons set forth in its written opinion filed herein on February 24, 1937, that the relief prayed should be granted:

It is, therefore, ordered, adjudged, and decreed that the enforcement, operation, and execution of the order of the Interstate Commerce Commission, entered July 11, 1935, and entitled Gulf Refining Company Terminal Allowance Ex Parte No. 104 Practices of Carriers Affecting Operating Revenues or Expenses Part II, Terminal Services, and directed against the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company, respondents in said proceeding, are hereby permanently enjoined and said order is hereby set aside and annulled.

This 1st day of May 1937.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

[File endorsement omitted.]

562 In District Court of the United States for the Southern District of Texas, Houston Division

In Equity No. 718

THE TEXAS COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA: INTERSTATE COMMERCE COMMISSION; TEXAS AND NEW ORLEANS RAILROAD COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY, DEFENDANTS

Bill of complaint

Filed February 11, 1936

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas, Houston Division:

The Texas Company, a corporation, presents this its bill of complaint against the United States of America, Interstate Commerce Commission, Texas and New Orleans Railroad Company, and The Kansas City Southern Railway Company, and thereupon respectfully states:

I

Plaintiff, The Texas Company, is a corporation organized and existing under the laws of the State of Delaware and having one of its principal offices at Houston, Texas, in the Southern District of Texas, Houston Division. Plaintiff is engaged in the refining of petroleum and the production of various products therefrom, with certain refineries and plants at Houston, Texas, Port Arthur, Texas,

and Port Neches, Texas, from all of which it distributes its products by shipment in carload lots, by railroad, in interstate commerce, to various states of the United States, other than Texas. In the conduct of its business, plaintiff receives carload shipments of various commodities, moving in interstate commerce, by railroad, to each of its said plants at Houston, Port Arthur, and Port Neches, Texas, from points of origin outside of the State of Texas.

563

II

Defendants, Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company, are corporations organized and existing under the laws of states of the United States, and are qualified to do business and are doing business in the State of Texas and have lines of railroad within, or extending into, the said Southern District of Texas, Houston Division.

Each of said defendant carriers is engaged in the transportation of property by railroad in interstate commerce, and, as such, is subject to the provisions of an Act of Congress entitled "An Act to Regulate Commerce," and approved February 4, 1887, and all acts supplemental thereto or amendatory thereof, being the Interstate Commerce Act.

Defendant Texas and New Orleans Railroad Company receives at points of origin on its lines of railroad, as well as from connecting carriers, carload freight for transportation to and delivery at plaintiff's aforesaid refineries at Port Arthur and Houston, Texas; and in like manner receives freight from plaintiff at its said refineries at Port Arthur and Houston, Texas, for transportation to destinations on its own lines or on the lines of other carriers, all in interstate commerce.

Likewise, defendant, The Kansas City Southern Railway Company receives at points of origin on its lines of railroad, as well as from connecting carriers, carload freight for transportation to and delivery at plaintiff's aforesaid refinery at Port Arthur and plants at Port Arthur and Port Neches, Texas, for transportation to destinations on its own lines or on the lines of other carriers, all in interstate commerce.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiencies Appropriation Act, approved October 22, 1913, to enjoin, set aside, annul, suspend, and restrain the enforcement, operation, and execution of an order of the Interstate Commerce Commission, by Division 3, entered January 15, 1936, in its docket Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services; and to
564 enjoin and restrain the said defendant carriers from the cancellation of tariffs filed with the Interstate Commerce Commission authorizing and providing for certain allowances to plaintiff

for services and facilities connected with the transportation of property and for the furnishing of instrumentalities used in such transportation at plaintiff's aforesaid plants at Port Arthur and Port Neches, Texas, which cancellation is alleged to be required by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel, or in any manner depart from the allowances for transportation service set forth in tariffs on file with the Interstate Commerce Commission for services and facilities in transportation at plaintiff's aforesaid plants at Port Arthur and Port Neches, Texas, or to make any effort to modify or change said tariffs in order to comply with the requirements of the said order, as more fully hereinafter set forth, and to set aside and hold for naught any and all acts of said defendant carriers performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated January 15, 1936.

IV

Said defendant carriers by lawful tariffs, on file with the Interstate Commerce Commission, have published and joined with other carriers in publishing rates and charges for the transportation of property to and from the spurs, sidings, tracks, and loading and unloading points at the plants of the plaintiff at Port Arthur and Port Neches, Texas, as well as at Houston, Texas, which rates and charges so filed and established, contemplate the placement of the empty cars at the place of loading and the removal of the loaded cars therefrom and transportation over the lines of the defendants and their connections to consignees at final destination of said shipments, and also, in like manner, contemplate the placing of the inbound loaded cars at the final point of unloading in the plants of the plaintiff and the removal of the empty cars therefrom.

Plaintiff demanded of said defendant carriers (according as they reach its respective plants), that they perform their duty under Sections 1, 6, and 15 of the Interstate Commerce Act, and by
565 custom and usage, by transferring empty and loaded cars to and from loading and unloading points in each of plaintiff's said plants. The defendant railroad companies, in accordance with the requirements of the law, and performing their duty under the law, elected to have plaintiff perform the terminal services at each of its said plants. Plaintiff now furnishes facilities necessary and performs all services of transportation of loaded cars between interchange tracks and points of loading and unloading in all of its said plants.

V

Texas and New Orleans Railroad Company now has, and for several years has had, on file with the Interstate Commerce Commission, in accordance with the provisions of Section 6 of the aforesaid Interstate Commerce Act, its freight tariff which requires and

authorizes the payment to the plaintiff of 90 cents per car as compensation for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's plant at Port Arthur, Texas, and track connection with the Texas and New Orleans Railroad.

Said defendant, The Kansas City Southern Railway Company (and its predecessor, Texarkana and Fort Smith Railway Company), issued and filed with the Interstate Commerce Commission in accordance with said provisions of Section 6 of the aforesaid Act, tariffs authorizing and requiring the payment to the plaintiff of 90 cents per car for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's said refinery at Port Arthur, Texas, and tracks of said Kansas City Southern Railway.

Said defendant, The Kansas City Southern Railway Company (and its predecessor, Texarkana and Fort Smith Railway Company), issued and filed with the Interstate Commerce Com-
566 mission in accordance with said provisions of Section 6 of the aforesaid Act, tariffs authorizing and requiring the payment to the plaintiff of $1.00 per car for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's asphalt plant at Port Neches, Texas, and tracks of said Kansas City Southern Railway.

Said defendant, The Kansas City Southern Railway Company (and its predecessor, Texarkana and Fort Smith Railway Company), issued and filed with the Interstate Commerce Commission in accordance with said provisions of Section 6 of the aforesaid Act, tariffs authorizing and requiring the payment to the plaintiff of 90 cents per car for services performed and facilities furnished by the plaintiff in switching loaded and empty cars in connection with carload shipments of freight between loading and unloading tracks at plaintiff's so-called Island Plant, and tracks of said Kansas City Southern Railway.

The amount of each of such allowances hereinabove described is less than the cost to the plaintiff for performing the aforesaid service, and is less than it would cost the said defendant railroad carriers, or either of them, to perform the service with their own engines and employees. Such allowances, therefore, are not in excess of just and reasonable allowances and are lawful under the provisions of paragraph (13) of Section 15 of the said Act.

VI

On July 6, 1931, the Interstate Commerce Commission, on its own motion, without formal pleading, initiated a proceeding of inquiry designated as Ex Parte No. 104, and assigned the same for

hearing at such times and places "with respect to such practices as the Commission may hereafter direct." Said proceeding of inquiry is entitled "Practices of Carriers Affecting Operating Revenues or Expenses."

On August 13, 1931, the Commission issued its notice entitled "Part II, Terminal Services of Class I Carriers." By said notice the Commission defined "in scope and restriction" that part of
567 the general inquiry as intended to establish facts concerning various services, charges, and practices of carriers subject to the Interstate Commerce Act, including among others, terminal services and practices in the receipt and delivery of carload freight; the spotting of cars; all services and privileges, except transit and lighterage, incident to said terminal services which within the meaning of Section 6 of the Interstate Commerce Act affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private track sidings, industrial plant tracks, and on the rails of industrial common carriers.

Hearings were begun September 15, 1931, and were had at various times and places thereafter, including a hearing at Galveston, Texas, May 16–19, 1932. At these various hearings witnesses appeared, gave oral testimony and filed documentary evidence purporting to be related to the subject under inquiry. Thereafter briefs were filed by various interested parties, including the plaintiff.

A proposed report was prepared by W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, and served on all interested parties. Exceptions to said proposed report were filed by plaintiff and others, oral argument was had and thereupon the Commission issued its report and order, dated May 14, 1935, 209 I. C. C. 11, in which the Commission set forth its legal conclusions with respect to the general situation presented. Various supplemental reports thereto were issued on said date. Further supplemental reports were later issued, among others, the Tenth Supplemental Report, dated May 14, 1935, 209 I. C. C. 93; Thirteenth Supplemental Report, dated July 8, 1935, 209 I. C. C. 727; Twenty-first Supplemental Report, dated July 11, 1935, 209 I. C. C. 756; and Twenty-fourth Supplemental Report, dated July 11, 1935, 209
568 I. C. C. 767, in which said supplemental reports the Commission set forth its conclusions and requirements with reference to the allowances paid by defendants and certain other carriers at the refineries of Magnolia Petroleum Company, at Chaison, Texas, Humble Oil & Refining Company at Baytown, Texas, Gulf Refining Company at Port Arthur, Texas, and your plaintiff's aforesaid refinery at Houston, Texas.

Under date of January 15, 1936, the Commission has issued and served upon the plaintiff and defendants its further order in the above entitled proceedings and, made a part of said order, has issued its Forty-fourth Supplemental Report entitled The Texas Company Terminal Allowances at Port Arthur, Texas.

Said original report of the Commission was served in mimeographed form and later reported in Volume 209 of the Commission's official reports beginning at page 11. A true copy thereof is attached hereto as "Appendix A," and is made a part hereof as fully as though herein set forth at length.

A true copy of said Forty-fourth Supplemental Report of the Commission and said order thereon of January 15, 1936, is attached hereto as "Appendix B," and is made a part hereof as fully as though herein set forth at length.

VII

The evidence, oral and documentary, relating to the service performed and facilities furnished by plaintiff to and for the benefit of the railroad defendants, and their connections, in the transportation of carload freight at, to, and from Port Arthur, Texas, Port Neches, Texas, and Houston, Texas, was presented to the Interstate Commerce Commission at a hearing before W. P. Bartel, Director of the Bureau of Service of the Interstate Commerce Commission, sitting as an Examiner, during sessions at Galveston, Texas, May 16 to 19, 1932.

VIII

On the 8th day of August 1935, petitions or bills of complaint were filed in this Honorable Court by Humble Oil & Refining Company and Magnolia Petroleum Company and on the 12th day of August 1935, petitions or bills of complaint were filed in this court by plaintiff The Texas Company and by the Gulf Refining Company; and aforesaid causes were docketed, respectively, as Nos.
569 690, 691, 692, and 693 in equity. The principal purpose of said bills of complaint was to annul and set aside and restrain the enforcement of the orders attached to aforesaid Tenth, Thirteenth, Twenty-first, and Twenty-fourth Supplemental Reports entered by the Commission under dates of May 14, July 8, July 11, and July 11, 1935.

Upon motions of the respective plaintiffs, this Honorable Court granted interlocutory injunctions in the several causes on August 19, 1935, restraining the enforcement of the aforesaid orders and restraining the railroad companies named as respondents, according as they were involved in the cases, from cancelling the allowances made to the respective plaintiffs at the aforesaid refineries at Baytown, Chaison, Houston, and Port Arthur, Texas.

The said causes came on for final hearing before this court on one record, on the 30th day of January 1936; and at said hearing, plain-

tiff offered in evidence in said causes a certified copy of all of the testimony taken by the Commission, and copies of the exhibits received in evidence, in aforesaid proceedings Ex Parte No. 104, Part II.

IX

At the hearing herein plaintiff will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of January 15, 1936, ostensibly was issued.

X

The said order of January 15, 1936, as above set forth, is unlawful and void in the following respects:

(1) The Commission was without authority, either in law or in fact, to make the said order.

(2) There is no evidence upon which the Commission could find—

(a) That the carriers have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing
570 said freight on the interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to plaintiff for service performed by it in moving the cars containing interstate shipments beyond the interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally;

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of Section 6 (7) of the Act.

(3) The Commission failed to make requisite findings to support its order.

(4) The Commission's said reports and order are arbitrary and in violation of all previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty car for load at, and removal of loaded car from, point of loading, and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the plaintiff.

(5) The evidence on which the order is based shows conclusively that the terminal allowances paid by the defendant railroad companies to plaintiff are for transportation services embraced within the services for which the defendant railroad companies publish, charge, and receive the rates named in their tariffs filed with the Interstate Commerce Commission; that the said terminal allowances are no more than just and reasonable and, being published in the tariffs of the defendant railroad companies, are just as binding

upon the defendant railroad companies as are any rates named in their tariffs to be collected for the transportation of property by them in interstate commerce.

571 (6) The evidence wholly fails to show any violation of law by the plaintiff or the defendant railroad companies in connection with the terminal allowances at plaintiff's plant as above described.

(7) The only provision of the Interstate Commerce Act found by the Commission to be violated by the payment of allowances named in the tariffs of the defendant railroad companies is paragraph (7) of Section 6; and so long as the allowances are named in the tariffs of the defendants they must be paid. The record wholly fails to show any violation of Section 6, paragraph (7).

The Commission has no power to prohibit defendant railroad companies from employing plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad companies to plaintiff for service and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of January 15, 1936, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily, therefore, the said order is void and of no effect.

XI

Plaintiff has handled, and will continue to handle for the defendant railroad companies, loaded and empty cars on which the terminal allowance payable to the plaintiff in accordance with the tariffs of the railroad defendants amounts in the aggregate to not less than Five Thousand Dollars ($5,000) per annum on interstate transportation. Unless the order of the Commission be set aside and the defendant railroad companies be required to refrain from filing cancelling tariffs or to withdraw their cancelling tariffs, if filed, plaintiff will be compelled to perform the service of transporting from the interchange track the empty car to and the loaded car from the point of loading, and the inbound loaded car, from the interchange track, to and the empty car from the point of unload-

572 ing to interchange tracks with the defendant railroad companies, for which transportation plaintiff will be compelled to assume an expense in excess of 90 cents per car more than if said terminal allowances were not cancelled, amounting in the aggregate excess to more than Five Thousand Dollars ($5,000) per annum, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiff is remediless in the premises at law, and relievable only in a court of equity, plaintiff prays that a preliminary or interlocutory order or injunc-

tion be entered, restraining and suspending the enforcement, operation, and execution of the said order of the Interstate Commerce Commission of January 15, 1936, until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the enforcement, operation, and execution of said order.

Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of January 15, 1936, and to restore the status quo of January 14, 1936, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad defendants, and each of them, to vacate, annul, and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of January 15, 1936, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiff further prays, that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the
573 defendants herein named, in the manner provided in the Acts of Congress; and plaintiff will ever pray.

Respectfully submitted.

W. O. CRAIN,
Houston, Texas.
NUEL D. BELNAP,
LUTHER M. WALTER,
JOHN S. BURCHMORE,
1522 First National Bank Bldg., Chicago, Illinois,
Solicitors for Plaintiff.

[*Duly sworn to by T. J. Donoghue; jurat omitted in printing.*]

574 *Appendix A*

[Omitted. Printed side page. 22 ante.]

637 *Appendix B to complaint*

INTERSTATE COMMERCE COMMISSION

The Texas Company Terminal Allowances at Port Arthur, Texas.
Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services. Submitted October 17, 1934. Decided January 15, 1936.

Carriers' compensation under their interstate line-haul rates found not to extend beyond the present points of interchange, and pay-

ment of an allowance to the industry for service beyond such points found unlawful.

Same appearances as in the original report.

Forty-Fourth Supplemental Report of the Commission Division 3, Commissioners McManamy, Lee, and Miller

By Division 3:

In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced concerning the payment of allowances to industries for performing spotting service at their industrial plants, or the performance of such service by respondents in lieu of payment. This supplemental report deals with the propriety and lawfulness of the allowances paid by the respondent carriers which serve the plants of The Texas Company, located in the vicinity of Port Arthur, Texas.

This company is engaged in the refining, manufacture, and sale of petroleum and its products. It owns three plants known as the Asphalt plant at Port Neches, the Port Island Plant and the Refinery at Port Arthur. All of the plants are extensive in size. The first two are served exclusively by the Texarkana & Fort Smith Railway Company, a part of the Kansas City Southern Railway Company, hereinafter termed the K. C. S. See Texarkana & F. S. Ry. Co. Control, 189 I. C. C. 253, 193 I. C. C. 521. The refinery is served by the K. C. S. and the Texas and New Orleans Railroad Company, hereinafter termed the T. & N. O.

Asphalt Plant

This plant is known as the Port Neches plant. Port Neches is about midway between Beaumont and Port Arthur, Texas, on the Neches River. The K. C. S. delivers to and receives loaded and empty cars from this plant on a K. C. S. delivery track 638 located just west of the plant. The plant engine moves the cars between this track and the points of loading and unloading within the plant, of which there are 64, as the plant's needs require. The track layout within the plant is complicated there being a number of ladder tracks as well as other tracks, some of which lead therefrom, and other tracks scattered throughout the plant. The curvature of the tracks within the plant ranges from 10 degrees, 52 minutes, to 44 degrees, 8 minutes. The curves from the lead to the ladder tracks in the majority of instances are either of 28 degrees or 44 degrees, 8 minutes, and it is necessary in many cases in reaching the points of loading and unloading on other tracks to pass over these ladder tracks.

Witness for the industry testified that the industry has performed the spotting service during his service with the company at Port

Neches, approximately 12 years prior to the hearing. He did not know how or by whom the service was performed prior to that time.

Another witness for the industry testified that the K. C. S. performed some of the spotting service at this plant up to the time the allowance was granted, but the extent thereof is not known.

The General Manager of the K. C. S. testified that the service performed by the industry's power up to the time the allowance was granted was confined almost, if not exclusively, to moving cars from one point to another within the plant and that the spotting service was taken over by the industry at the time the allowance became effective. Port Neches is about 11 miles from the transportation yard at Port Arthur, the terminal for the engines which serve Port Neches, and it was difficult for the K. C. S. to take care of necessary switching at Port Neches with one engine without running into overtime. The arrangement for having the plant take over switching was mutual. It is significant to note in this connection that a cost study was made covering the operations within the plant for the period December 4 to 14, 1923, inclusive. This study shows that a total of 128 hours, 53 minutes, engine hours, approximately 13 hours per day, were devoted to terminal switching service within the plant; that approximately 5.5 engine hours per day were devoted to intra-plant switching; and that the locomotive was idle approximately 5 hours per day. The witness concluded from this cost study, as well as those of the other two plants here considered, that it would not be possible for the carrier to perform service within these plants, day in and day out, in any less time than the refineries were performing it, and did perform it during the cost study period. There can be no doubt that the different services embraced in the cost study were made at different times during each 24-hour period, so it can safely be assumed that it would be necessary for the respondent to assign a locomotive to the plant if the service within the plant was to be performed as the plant performed it. An examination of a blue print of the plant's tracks filed as an exhibit, however, shows that because of the complicated layout it would be practically impossible for the respondent to perform service thereover without the assignment of a locomotive of a special design to negotiate the curves encountered in reaching the points of loading and unloading. Such engine would have to be available practically at all times to perform the service to meet the needs of the plant.

639 Island Plant

This plant is served by the K. C. S. Traffic is received from and delivered to the plant on a series of tracks north of the plant from which they are moved by plant power to the various points of loading and unloading within the plant, of which there are 30. There are 1.34 miles of 60-pound rail and .35 miles of 80-pound rail in the plant.

Witness for the industry who had been connected with this particular plant for 12 years prior to the hearing, testified that to the best of his knowledge the respondent had never performed spotting service within the plant. Cars are taken from the interchange track and spotted whenever it is convenient for the plant to handle them. If the K. C. S. were to perform the service the industry would expect the same service as obtained with its own power and a schedule satisfactory to both respondent and the plant would have to be worked out. It is interesting in this connection to note that prior to the granting of the allowance a cost study was made over an 8-day period commencing December 10 and ending December 17, 1923. This cost study involved the handling of 160 loaded and 132 empty cars for the railway company and 70 loaded and 24 empty intraplant cars. A total of 90 hours and 44 minutes engine time was consumed at a total cost of $374.05 or an average of $4.126 per engine hour. Of the total hours mentioned, 41 hours and 36 minutes represents idle time which has been charged to the industry. Time consumed in switching loaded and empty cars for the railway company was 40 hours, 1 minute, and that charged for the movement of the cars in intraplant service was 9 hours and 3 minutes. The total engine time divided by the number of days shows that the engine was in service an average of approximately 11⅓ hours per day, and no doubt the handling of the loaded and the empty cars was between the interchange tracks and the points of loading and unloading within the plant at different times during the day so that if the carrier were called upon to perform the service the same as obtained by the industry with its own power, it would necessitate the assignment of an engine to the plant to be used to meet the industry's needs and desires.

Refinery

The refinery is served by the K. C. S. and the T. & N. O. Entrance to the plant by both these carriers is along the southern boundary of the plant, the K. C. S. approaching from the east and the T. & N. O. approaching from the west. The T. & N. O. spur track connects with the plant about the center of the plant on the south. The K. C. S. connects with the plant tracks to the east of the T. & N. O. connection. There are 78 separate tracks scattered throughout the plant on which cars are spotted for either loading or unloading, but the majority of cars would be spotted on about 10 of these tracks. The loading tracks generally are on the west end of the plant and the unloading on the east end. Tracks numbered 8 to 12 on the east
end are used principally for unloading steel on the ground.
640 They also lead to the car shops. Shipments coming in over
the K. C. S. intended for either one of these tracks would necessitate a reverse movement, that is, after delivery to the plant by the K. C. S. the plant locomotives would move the cars in a reverse movement for a distance of about a thousand feet, and it would then be necessary to shove the cars in a northerly direction onto the tracks

designated. The same would be true with respect to tracks numbered 16 to 26, inclusive. On traffic arriving by the T. & N. O. destined to tracks west of the point of connection it would require a similar movement by the plant locomotive in order to reach spots on tracks 51 to 78, inclusive. The only tracks which could be reached apparently by direct movement of either carrier are tracks in the center of the plant numbered 27 to 47, inclusive. From the blueprint of the track layout it would appear that some severe curves would be encountered in moving cars between the interchange tracks and the points of loading and unloading within the plant. However, the record does not show the degree of such curvature. Tracks 27 to 35 near the center of the plant are the principal loading tracks. To some extent they are also used for unloading. Tracks 43 to 45 are also loading tracks as well as tracks 76, 77, and 78. Cars are removed from the interchange tracks used by both the K. C. S. and T. & N. O. under a schedule which has been worked out to the mutual interest of the switching crews and the industry, that is, the cars are moved and spotted within the plant in order to meet the plant's convenience and needs.

The General Manager of the K. C. S. testified that formerly that company switched this plant, but as the plant grew and as the need for intraplant movements increased, the cost of that intraplant service performed by that respondent for account of the refinery increased in proportion to the increase of movement and it was for this reason that the Texas Company was prompted to put an engine in the plant, entirely from an economical standpoint, and that the plant locomotive gradually undertook the performance of the spotting service which was formerly performed by respondent.

The return of the T. & N. O. to our questionnaire, filed of record, indicates that the Texas Company had performed the switching service with its own power and at its own expense prior to its application for an allowance. Further, that information was not available to respondent concerning the date on which such switching service was begun by the industry, but that it was presumably in effect from the beginning of plant operations.

A cost study was also made at this plant by the K. C. S. covering the period November 20 to December 1, 1923, which disclosed the cost of handling both loaded and empty cars between the points of loading and unloading and the interchange tracks to be $1.168 per car. Three locomotives were used during this period, and a total of 250 engine hours were used. The number of cars handled for the carriers is shown as 793 loads and 836 empties and those handled in intraplant service as 146 loads and 604 empties. The time considered in handling the loaded cars for the carriers is shown as 67 hours, 10 minutes, and that for the empty cars as 68 hours, 40 minutes. The time consumed in plant service was 20 hours, 12 minutes, and 38 hours, 57 minutes, in handling loaded and empty
641 cars, respectively. The engines were idle a total of 55 hours, 6 minutes. There are several items used in the cost study,

which if we were to determine the cost, would be eliminated or seriously questioned. However, in view of our conclusions herein we will not consider them further. Following these cost studies, however, the K. C. S. published tariffs effective March 31, 1924, providing for the payment of allowance of 90 cents per loaded car at the Island plant and the refinery and $1.00 per loaded car at the Port Neches plant.

In Magnolia Petroleum Co. Terminal Allowance, 209 I. C. C. 93, we explained the origin of the allowance there considered. That was the first allowance granted to an oil refinery in that section of the country, and it was granted by the K. C. S. largely as a matter of competition. See also Humble Oil & Refining Co. Terminal Allowance, 209 I. C. C. 727; Gulf Refining Co. Terminal Allowance, 209 I. C. C. 756; Texas Co. Terminal Allowance at Houston, Texas, 209 I. C. C. 767.

On April 30, 1923, the Freight Traffic Manager of the K. C. S. wrote to the Manager of the Traffic Department of the Texas Company, New York, N. Y., advising him of the arrangement made by the Southern Pacific and the Magnolia Petroleum Company at Chaison, Texas, for the payment of an allowance to the latter for handling loaded cars between interchange tracks and the points of loading and unloading within the plant, and stated:

"We feel that we will be compelled to meet the action of the Southern Pacific Company at Chaison and will want to treat your company equally as well as we do the Magnolia Petroleum Company although the service might not be exactly the same in both instances, and the service which your company might perform for us might have to be computed upon what we could agree on as the cost of same by some fair method, you realizing that to do anything more than to pay the cost might be considered illegal.

"You will remember in discussing this matter before, when the question was up of our switching rates between the plants of your company in the vicinity of Port Arthur, you did not think well of receiving an allowance but rather preferred that the switching rates be reduced which we were unable to accomplish because of the decision of the Railroad Commission of Texas; consequently, I am giving you the above information so that if you feel like opening negotiations for some allowance we can get together and work it out."

On June 1, 1923, the President of the K. C. S. addressed a letter to the Chairman of the Executive Committee of that carrier in which attention was called to the action of the Southern Pacific in making an allowance to the Magnolia Petroleum Company for switching loads in and out of their plant at Chaison, and said:

"This movement of the Southern Pacific puts quite a burden on the railroads as it means similar action at all the refineries we serve in the Beaumont-Port Arthur district. Their allowance is predicated on the theory that carriers must deliver and receive loads at loading and unloading points either on their own rails or on rails

which have been furnished by the industrial plant; that
642 the duty of the carrier is not completed until such delivery is effected; and if an industry would relieve the carrier of this expense it is entitled to compensation therefor.

"The Gulf Refining Company and the Texas Company have been notified of our willingness to grant them the same concession, but neither of them has asked us to act thereon. They simply acknowledged receipt of our communication, stating that they would go into the matter and advise us definitely, which has not yet been done.

It is difficult to reconcile the views expressed in this letter with the testimony of the General Manager of the K. C. S. to the effect that that company had been performing the service at these plants up to or shortly before the time that the allowances were granted. One of the purposes of granting the allowance is the fact that it is less in amount than the cost to the carriers in performing the spotting service. The carriers on this record undertake to show that the allowances are less than the cost to the industry as well as less than the cost to them should they perform the spotting service. Just how the payment of an allowance which would reduce the cost to the K. C. S. for a service which it claims to have previously performed would place a burden upon that railroad, is not clear. The assumption of the cost of the spotting service, which had theretofore been performed by the industry without recourse upon the carriers, no doubt was a burden upon the latter. It seems clear that when the first allowance was granted by the T. & N. O. to the Magnolia Petroleum Company that the K. C. S. for competitive reasons granted a similar allowance. It then proceeded to solicit applications for allowances from other oil refineries, including those herein considered. This was done as testified by a traffic witness for that carrier for competitive reasons and to avoid a charge of unjust discrimination.

Following the principles announced in Propriety of Operating Practices—Terminal Services, supra, and upon this record we find that the transportation service which it is the duty of the respondent carriers to perform for the Texas Company under interstate line-haul or switching charges, begins and ends at the interchange tracks described of record which are reasonably convenient points for the receipt and delivery of carload freight; that the service performed by the Texas Company within its plants beyond said interchange tracks is a plant service which it is not the duty of said respondents to perform.

We further find that by payment of allowances for such service the respondent carriers provide the means by which the Texas Company enjoys a preferential service not accorded to shippers generally, and refunds or remits a portion of the rates or charges collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

An appropriate order will be entered.

643 ORDER

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 15th day of January, A. D. 1936.

The Texas Company Terminal Allowance. Ex Parte No. 104. Practices of Carriers Affecting Operating Revenues or Expenses. Part II, Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowances paid by the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company to The Texas Company, for performance by the latter of spotting service within its plants at and in the vicinity of Port Arthur, Texas, and the Commission having under date of May 14, 1935, made and filed a report, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the above allowances paid to The Texas Company, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the payment of said allowances the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company violate the Interstate Commerce Act as set forth in the above-mentioned reports:

It is ordered, that the Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company be, and they are hereby, notified and required to cease and desist on or before March 2, 1936, and thereafter to abstain from such unlawful practice.

By the Commission, Division 3.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

[File endorsement omitted.]

644 In United States District Court

No. 718. In Equity

[Title omitted.]

Answer of defendant, Texas and New Orleans Railroad Company, to plaintiff's original bill of complaint

Filed February 18, 1936

Comes now Texas and New Orleans Railroad Company, one of the defendants herein, and for answer to plaintiff's original bill of complaint represents and shows to the Court;

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill, bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said
645 bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

J. H. TALLICHET,
Solicitor for Texas and New Orleans Railroad Company.

[File endorsement omitted.]

646 In United States District Court

In Equity No. 718

[Title omitted.]

Stipulation and waiver of notice

Filed Feb. 25, 1936

Now comes the plaintiff and defendants in the above entitled cause, by their undersigned solicitors, and agree and stipulate as follows:

Whereas, there are now pending in this Court four certain causes, known as Nos. 690, 691, 692, 693, In Equity, wherein Humble, Mag-

nolia, plaintiff Texas Company and Gulf were and are plaintiffs, and the United States of America, and Interstate Commerce Commission are defendants, and the undersigned, Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company, are defendants in certain of said causes; and

Whereas, in the said causes, Nos. 690, 691, 692, and 693, the plaintiffs severally seek to set aside and annul and restrain the enforcement of certain orders of the Interstate Commerce Commission entered in proceedings known as Ex Parte No. 104, Part II, Terminal Services of Class I Carriers, involving plants or refineries of the named plaintiffs at Baytown, Chaison, Port Arthur, and Houston, Texas; and

Whereas, in and by its bill of complaint in the above entitled cause, No. 718, plaintiff seeks to annul, set aside, and enjoin the enforcement of a further report and order of the Interstate Commerce Commission entered January 15, 1936, in said proceedings, Ex Parte No. 104, Part II, and involving plants or refineries of plaintiff at Port Arthur and Port Neches, Texas; and

Whereas, said causes, Nos. 690, 691, 692, and 693, were consolidated by order of this Court for final hearing on one record; and the same came on for hearing and were heard by the Court on the 30th day of January 1936; and the record thereupon made included certified copies of the transcript of testimony taken and certified copies of the exhibits received in said proceedings before the Interstate Commerce Commission, known as Ex Parte No. 104, Part II; and

Whereas, the plaintiff's bill of complaint in this cause, No. 718 prays among other things, for an interlocutory injunction
647 against the defendants in like form and upon like conditions as the interlocutory injunction heretofore granted by this court on the 19th day of August 1935, in cause No. 692 and others above referred to; and the defendants, United States of America and Interstate Commerce Commission, oppose the issuance of such interlocutory injunction upon the same grounds and for the same reasons urged by them to the Court in oral argument of said causes, Nos. 690, 691, 692, and 693, on August 19, 1935, which grounds and reasons were considered and rejected by the Court.

And the parties hereto being fully advised in the premises, it is hereby stipulated and agreed, as follows:

1. The defendants waive oral hearing on plaintiff's prayer for interlocutory injunction and waive notice of hearing thereof.

2. The plaintiff and defendants agree that the Honorable the District Judge of this Court may call to his assistance two other Judges, one of whom shall be a Circuit Judge, as by the statute provided, and that such statutory court may hear and determine Plaintiff's aforesaid prayer for interlocutory injunction on the verified bill of complaint (which is not to be taken as admitted by the defendants, or any of them), and upon the same record made in the

aforesaid causes, Nos. 690, 691, 692, and 693, at the final hearing on January 30, 1936.

3. The plaintiff and defendants further agree that the same statutory court of three judges may enter its appropriate order consolidating said cause, No. 718, for hearing and may hear and finally determine said cause, No. 718, without oral argument, upon the verified bill of complaint and the answers to be filed by the defendants thereto and briefs to be filed therein, and upon the same record upon which said causes, Nos. 690, 691, 692, and 693, in equity, were heard on January 30, 1936, as aforesaid, and without the receiving of further evidence, except that plaintiff and defendants may, in their pleadings and briefs, refer to and quote from such of the published tariffs of the railroad defendants herein as are necessary in determining the rates therein published and the service to be performed by the railroad therefor.

John S. Burchmore, W. O. Crain, Solicitors for Plain-
648 tiff; Elmer B. Collins, Solicitor for United States of America; Daniel W. Knowlton, Solicitor for Interstate Commerce Commission; Baker, Botts, Andrews & Wharton, J. H. Tallichet, Solicitors for Texas and New Orleans Railroad Company; W. E. Orgain, Y. D. Carroll, F. H. Moore, W. E. Davis, J. H. T., Solicitors for the Kansas City Southern Railway Company.

[File endorsement omitted.]

649 In United States District Court

In Equity No. 718

[Title omitted.]

Answer of United States

Filed February 27, 1936

United States, one of the above-named defendants, for answer to the bill of complaint filed herein against it, answers and says:

I

United States admits the facts alleged in sections I, II, and III of the bill of complaint, except that it denies that the services referred to in said section III constitute transportation services or instrumentalities in connection with transportation for which an allowance may lawfully be paid under the Interstate Commerce Act.

II

United States denies the matters, things, and conclusions alleged in section IV of the bill of complaint, except that it admits that the

defendant carriers publish rates and charges for the transportation of property to and from plaintiff's plants therein mentioned, and admits further that plaintiff switches or moves cars between so-called interchange tracks located at the gates of plaintiff's plants and points within said plants at which plaintiff desires, for convenience of its industrial operations, to load and unload the cars, but United States particularly denies that said tariffs which publish said rates and charges for the transportation of property, specify or contemplate that for said rates and charges the defendant carriers
650 will move said cars to or from particular points inside of plaintiff's private plants and grounds at which points plaintiff may desire to load or unload said cars, and alleges that by the terms of said tariffs, the rates and charges therein published apply and include transportation services to or from the plants of plaintiff, without stating whether said carriers will move the cars beyond designated interchange tracks into the private plants and grounds of plaintiff to or from particular points therein at which plaintiff may desire to load or unload the cars.

III

Answering section V of the bill of complaint, United States admits that defendant carriers have on file with the Interstate Commerce Commission their tariffs which state that said carriers will pay plaintiff 90 cents per car for services performed by plaintiff in moving and switching loaded and empty cars between the interchange tracks at plaintiff's plants and points inside of said plants at which plaintiff desires said cars to be placed within its plant at Port Arthur, Texas, and at its refinery at Port Arthur, and at its so-called Island Plant at Port Arthur, and that said tariff of the Kansas City Southern Railway Company publishes an allowance of $1.00 per car for such services to be performed by plaintiff within its asphalt plant at Port Neches, but United States denies that the allowances published in said traiffs are in accordance with Section 6 of the Interstate Commerce Act, and denies that the alleged services described in said tariffs constitute a transportation service for which any allowance may be paid or which may be performed under the *lien* haul tariffs of said carriers without additional charge. Answering the last paragraph of said section V, United States alleges that it is irrelevant and immaterial to any issue raised by the bill of complaint, whether the amount of the allowances received by plaintiff is more or less than the cost to plaintiff of moving said cars within its private plants and grounds, and denies that
651 said allowances are lawful under the provisions of paragraph (13) of Section 15 of said Act, or under any other provision of law.

IV

United States admits the facts alleged in Sections VI and VII of the bill of complaint, except that it denies that all of the evidence

relating to plaintiff's plants was heard and received by the Interstate Commerce Commission at the hearings on the dates mentioned in said Section VII.

V

United States admits the facts alleged in sections VIII and IX of the bill of complaint, but alleges that the allegations of section VIII are irrelevant and immaterial to any issue raised in this suit.

VI

United States denies the allegations contained in sections X and XI of the bill of complaint and denies that the Commission's Order of January 15, 1936, is unlawful or void for the reasons therein alleged or for any other reason, and United States particularly denies that plaintiff will suffer irreparable loss and injury or other legal damage if said Order is not enjoined and annulled.

VII

Except as herein expressly admitted, United States denies each and every allegation made and contained in the bill of complaint and in the several separate sections and paragraphs thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill dismissed with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

ELMER B. COLLINS,
Special Assistant to the Attorney General.
JOHN DICKINSON,
Assistant Attorney General.
DOUGLAS W. MCGREGOR,
United States Attorney.

652 [*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

653 In United States District Court

Equity No. 718

[Title omitted.]

Order convening three-judge court

Filed March 3, 1936

This being an Application for Interlocutory Injunction, suspending or restraining the enforcement, operation, or execution of, or

setting aside, an Order made and entered by the Interstate Commerce Commission, I call to my assistance in hearing same, in accordance with Section 47, Title 28, U. S. Code Annotated, the Honorable Rufus E. Foster, United States Circuit Judge of the Fifth Circuit, and the Honorable Wayne G. Borah, United States District Judge for the Eastern District of Louisiana.

Done at Houston, this, the 26th day of February A. D. 1936.

T. M. KENNERLY,
United States District Judge.

[File endorsement omitted.]

654 In United States District Court

In Equity No. 718

[Title omitted.]

Interlocutory injunction and order consolidating cause for hearing with Eq. Nos. 690, et seq., etc.

Filed March 3, 1936

The plaintiff having heretofore filed its Bill of Complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation and execution of a certain order made and entered by the Interstate Commerce Commission, on the 15th day of January 1936, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 3rd day of March 1936, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the court herein:

And the Honorable T. M. Kennerly, Judge of the District Court of the United States for the Southern District of Texas, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determiue said application for said interlocutory injunction, two other judges, namely, Honorable Rufus E. Foster, United States Circuit Judge and Honorable Wayne G. Borah, United States District Judge:

And it appearing that counsel for each of the respondents have waived notice of hearing by this court on such application for interlocutory injunction, and have also waived oral hearing:

655 It further appearing from the Bill of Complaint that unless the United States of America and the Interstate Commerce Commission be restrained from taking any further steps for the

enforcement of the aforesaid order, and unless the Texas and New Orleans Railroad Company and the Kansas City Southern Railway Company be restrained from filing cancelling tariffs, or be required to withdraw their cancelling tariffs, if they have already been filed, plaintiff will be compelled to perform the transportation services without compensation, to its irreparable damage; and that the effective date of such order and tariffs should be suspended pending the outcome of the matters in controversy in this proceeding.

And the Court having jurisdiction of the parties hereto and of the subject matter:

Now, therefore, it is ordered that during the pendency of this matter, the United States of America and the Interstate Commerce Commission be, and they are hereby, restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid order, entered January 15, 1936, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to petitioner, The Texas Company, and the said order is suspended, stayed, and set aside, pending the further order of the court.

It is further ordered that the defendants Texas and New Orleans Railroad Company and the Kansas City Southern Railway Company refrain from filing cancelling tariffs. If cancelling tariffs have been filed, that each of them is hereby suspended and set aside pending the further order of this court.

It is further ordered that this cause be consolidated for hearing with causes number 690, 691, 692, and 693, In Equity, and that in accordance with the stipulation of counsel for all parties, filed herein on February 25, 1936, this cause may be finally determined without oral argument upon the verified Bill of Complaint and the answers to be filed by the defendants herein, and briefs to be filed herein and upon the same record upon which said causes Number 690, 691, 692, and 693, In Equity, were heard on January 30, 1936, and without the receiving of further evidence, except that plaintiff and
656 defendants may, in their pleadings and briefs, refer to and quote from such of the published tariffs of the railroad defendants herein as are necessary in determining the rates therein published and the service to be performed by the railroad therefor.

By the Court.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

MARCH 3, 1936.

[File endorsement omitted.]

657 In United States District Court

No. 718. In Equity

[Title omitted.]

Answer of defendant, The Kansas City Southern Railway Company, to plaintiff's original bill of complaint.

Filed March 4, 1936

Comes now the Kansas City Southern Railway Company, one of the defendants herein, and for answer to plaintiff's original bill of complaint represents and shows to the Court:

I

It admits the allegations of Sections I, II, III, V, VI, VII, VIII, IX, and XIV of said bill.

II

It admits the allegations of Section IV of said bill, but with the qualification that it denies that it is its duty as a common carrier to deliver and receive loaded and empty cars at the final point of unloading or loading in plaintiff's plant, and alleges that its said duty does not go beyond the placement of loaded and empty cars at reasonable or customary places of unloading and loading.

III

It represents to the Court that the matters and things set forth and alleged in Sections XI, XII, and XIII of said bill bear solely on a controversy between plaintiff and defendant, the United States of America, in which this defendant is not a necessary party, and that it should not be required to admit or deny said allegations. If required to answer it alleges the facts to be that the allowances
658 made by it and described in the reports of the Interstate Commerce Commission in Ex Parte 104, part II, were and are no more than the cost to plaintiff of performing the described service, and less than what it would have cost this defendant to perform the same; that when said allowances were published in the tariffs described in said bill, or in preceding tariffs, this defendant believed and yet believes that it was its duty as a common carrier to perform the services for which said allowances were made; and that there was no evidence or no substantial evidence to the contrary, or that the duty aforesaid was that of plaintiff before the Interstate Commerce Commission in said Ex Parte 104, part II.

Premises considered, defendant prays that the Court enter such decree herein as the facts may warrant and as equity may require.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
Defendant.

By F. H. MOORE,
W. E. DAVIS,
Y. D. CARROLL,
ORGAIN, CARROLL & BELL,
Its Solicitors.

[File endorsement omitted.]

659 In United States District Court

In Equity No. 718

[Title omitted.]

Answer of Interstate Commerce Commission

Filed March 5, 1936

The Interstate Commerce Commission, one of the defendants in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XI, inclusive, of the bill of complaint, the Commission admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph VI of the bill of complaint, and the Forty-fourth Supplemental Report dated January 15, 1936, referred to in said paragraph VI, and the
660 order dated January 15, 1936, referred to in said paragraph VI and also in paragraph III of the bill of complaint, copies of which, respectively, are attached to the bill of complaint as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether said practices of what are referred to in said original report as Class I

carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including The Texas Company, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of said Company, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon said Company, and
661 upon other interested parties, its said reports and orders; that said reports and order included the Commission's findings of fact, decision, conclusions, order, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of January 15, 1936, was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph X of the bill of complaint, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, unless said order of January 15, 1936, is set aside and the defendant railroad companies
662 are either required to refrain from filing canceling tariffs or from withdrawing their canceling tariffs, if filed, plaintiff

will be subjected to either irreparable loss or injury, as alleged in paragraph XI of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with either the allegations or conclusions of fact included in said original report of May 14, 1935, and in said Forty-fourth Supplemental Report and order of January 15, 1936, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

663 [*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

[File endorsement omitted.]

664 *Opinion*

Filed February 24, 1937

[Omitted. Printed side page. 485 ante.]

672 *Findings of fact and conclusions of law*

Filed May 1, 1937

[Omitted. Printed side page. 136 ante.]

677 In United States District Court for the Southern District of Texas, Houston Division

In Equity No. 718

THE TEXAS COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; TEXAS AND NEW ORLEANS RAILROAD COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY, DEFENDANTS

Final decree

Filed May 1, 1937

The above entitled cause came on for final hearing upon petition for permanent injunction and having been heard by a court of three judges, organized pursuant to the statute, and the argument and briefs of counsel for all parties having been fully heard and considered, and the court having concluded, for the reasons set

forth in its written opinion filed herein on February 24, 1937, that the relief prayed should be granted:

It is, therefore, ordered, adjudged and decreed that the enforcement, operation, and execution of the order of the Interstate Commerce Commission, entered January 15, 1936, and entitled The Texas Company Terminal Allowance Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, and directed against the Texas and New Orleans Railroad Company and the Kansas City Southern Railway Company, respondents in said proceeding, are hereby permanently enjoined and said order is hereby set aside and annulled.

This 1st day of May, 1937.

RUFUS E. FOSTER, *Circuit Judge.*
WAYNE G. BORAH, *District Judge.*
T. M. KENNERLY, *District Judge.*

[File endorsement omitted.]

678 In United States District Court

In Equity No. 691 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 30, 1937

TO KANSAS CITY SOUTHERN RAILWAY COMPANY:

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the orders of the Interstate Commerce Commission described in the petitions in the above-entitled cases, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decrees of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel, Interstate Commerce Commission.

679 Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 21st day of June 1937.

FRANK H. MOORE,
WM. E. DAVIS,
Attorney for Kansas City Southern Railway Company.

[File endorsement omitted.]

680 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division)

[Title omitted.]

Summons and severance

Filed June 19, 1937

TO TEXAS AND NEW ORLEANS RAILROAD COMPANY:

You are hereby invited to join with the United States, defendant, and the Interstate Commerce Commission, intervening defendant, in an appeal to the Supreme Court of the United States which
681 they will seasonably prosecute from the final decree of the above-entitled Court entered May 1, 1937, setting aside, annuling, and enjoining the enforcement of the orders of the Interstate Commerce Commission described in the petitions in the above-entitled cases, wherein you are a defendant.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for a reversal of said final decrees of the District Court without joining you.

June 7, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing summons and severanee and the receipt of a copy thereof are hereby acknowledged this 12 day of June 1937.

J. H. TALLICHET,
Attorney for Texas and New Orleans Railroad Company.

682 [File endorsement omitted.]

683 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division)

[Title omitted.]

Petition for appeal

Filed June 19, 1937

The United States of America, defendant, and the Interstate Commerce Commission, intervening defendant in the above-entitled causes, feeling themselves aggrieved by the final decrees entered in said causes by this Court on May 1, 1937, pray an appeal from said decrees to the Supreme Court of the United States.

684 The particulars wherein they consider the decrees erroneous are set forth in the assignment of errors accompanying this petition and to which reference is hereby made.

Said defendants pray that a transcript of record, proceedings, and papers on which said decrees were made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated June 10, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

[File endorsement omitted.]

685 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division)

[Title omitted.]

Notice to the Attorney General of the State of Texas

Filed, June 19, 1937

To the Honorable the ATTORNEY GENERAL OF THE STATE OF TEXAS:

Pursuant to the Urgent Deficiencies Act of October 22, 1913,
686 38 Stat. 221, you are hereby notified that the defendant,

United States of America, and the Interstate Commerce Commission, intervening defendant, in the above entitled causes, have taken an appeal to the Supreme Court of the United States from the final decrees of the United States District Court, entered May 1, 1937, and the order allowing appeal makes the same returnable within 40 days from the date thereof.

June 8, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of a copy of the foregoing notice is hereby acknowledged this 11th day of June 1937.

[SEAL] WM. MCCRAIN,
Attorney General, State of Texas.

[File endorsement omitted.]

687 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division).

[Title omitted.]

Notice of appeal

Filed June 19, 1937

To HUMBLE OIL & REFINING COMPANY, MAGNOLIA PETROLEUM COMPANY, THE TEXAS COMPANY, GULF REFINING COMPANY, AND THE TEXAS COMPANY, *Plaintiffs:*

Please take notice that, pursuant to the statutes and rules of
688 court in such case made and provided, the United States of America, defendant, and the Interstate Commerce Commission, intervening defendant, in the above-entitled causes, and each of them, do hereby appeal to the Supreme Court of the United States from the final decrees of the District Court made and entered on the 1st day of May 1937, which set aside, annulled, suspended, and per-

manently enjoined the orders of the Interstate Commerce Commission complained of in said causes.

June 10, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

Service of the foregoing notice of appeal and the receipt of a copy thereof are hereby acknowledged this 16th day of June 1937.

JOHN S. BURCHMORE.
WALTER, BURCHMORE AND BELNAP,
Solicitors for Plaintiffs.

[File endorsement omitted.]

689 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division).

[Title omitted.]

Assignment of errors

Filed June 19, 1937

United States of America and Interstate Commerce Commission, defendants in the above-entitled cases, now come and file the following assignment of errors in connection with their petition for an appeal from the final decree entered by this Court on May 1, 1937, in each of said cases:

690 The District Court erred:

1. In entering the decrees enjoining, setting aside, and annuling the orders of the Interstate Commerce Commission.

2. In holding that the switching and "spotting" of cars within the respective industrial plants of the plaintiffs is "transportation" within the meaning of the Interstate Commerce Act, subdivisions (3), (4), and (6) of Section 1 of said Act.

3. In holding as follows: "There is no evidence that such railroads are prohibited by the plaintiffs from performing such service, nor that there are physical conditions which prevent them from doing so. Indeed, there appears to be no 'abnormal conditions' of any

kind which would serve to relieve the railroads involved of the duty."

4. In holding that "Having the duty to perform the service, the railroads involved properly and lawfully contracted with the respective plaintiffs to perform it, and properly and lawfully made such plaintiffs allowances therefor in their tariffs."

5. In holding that in these cases, and under the evidence therein, "The Commission was without power to wholly prohibit such allowances."

6. In holding that the Commission's orders in these cases are not based on sufficient findings necessary to support them nor do such findings appear in the reports which are made a part of the orders.

7. In granting the injunctions sought in all cases.

8. In failing and refusing to hold that the Commission's orders in these cases are within the power conferred upon it by the Interstate Commerce Act.

9. In failing and refusing to hold that the findings made by the Commission in each of these cases are sufficient to support the respective orders.

691 10. In failing and refusing to hold that each of the orders in these cases is supported by substantial evidence.

11. In failing and refusing to dismiss the petition in each of these cases for want of equity.

12. In failing and refusing to find and hold that the "spotting" of cars within the industrial plants of the plaintiffs in these cases is not "transportation" for which the carriers are compensated under their line-haul rates.

13. In failing and refusing to hold that the "spotting" of cars within the industrial plants of the plaintiffs is a private or plant service which the respective railroads may not lawfully perform or pay plaintiffs for performing under their line-haul rates or without charge in addition to said rates.

14. In failing and refusing to find that no custom or practice, long continued or otherwise, exists among plaintiffs and the railroads which serve their plants or among carriers and shippers generally, of including and performing or paying for "spotting" of cars within industrial plants as part of the service for which railroads are compensated by their line-haul freight rates.

15. In failing and refusing to give and accord proper legal force and effect to the evidence of record in these cases.

16. In failing and refusing to consider separately and to give proper legal effect to the particular evidence showing the actual physical and other circumstances and conditions under which

692 the "spotting" services are performed at the particular plants of the respective plaintiffs, and in assuming that the facts and circumstances concerning the nature of the "spotting" service and

the conditions of its performance are the same at each of the plants of the five plaintiffs.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel Interstate Commerce Commission.

June 10, 1937.

[File endorsement omitted.]

709 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division)

[Title omitted.]

Order allowing appeal

Filed June 19, 1937

In the above-entitled causes, the United States of America, defendant, and the Interstate Commerce Commission, intervening defendant, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this court in these causes entered May 1, 1937, and having also made
710 and filed an assigment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

Ordered and decreed that the appeals be, and the same are hereby, allowed as prayed for.

This 19 day of June 1937.

T. M. KENNERLY,
United States District Judge.

Service of the foregoing order allowing appeal and the receipt of a copy thereof are hereby acknowledged this 19 day of June 1937.

JOHN S. BURCHMORE,
WALTER, BURCHMORE AND BELNAP,
Solicitors for Plaintiffs.

[File endorsement omitted.]

711 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division)

[Title omitted.]

Stipulation re transcript of record

Filed October 14, 1937

It is hereby stipulated and agreed by and between counsel for the parties to the above-entitled causes, for the purpose of settling the record for the appeals therein to the Supreme Court of the United States, pursuant to Equity Rule 75, that:

712 1. The narrative statement of testimony attached hereto is a true and correct transcript in narrative form of that part of the oral testimony contained in the certified copy of the record of proceedings before the Interstate Commerce Commission introduced in evidence in these causes, covering the five plants involved in these five appeals.

2. The entire record of testimony and exhibits before the Interstate Commerce Commission (introduced in evidence in this court as an exhibit and consisting of printed volumes 1 to 12, inclusive, of oral testimony, and 1 to 5, inclusive, of exhibits) and the transcript of testimony and other exhibits introduced at hearing on application for final injunction before the District Court, shall be transmitted in original form by the clerk of this court to the clerk of the Supreme Court and shall there be retained as a part of the record in these causes, and may be referred to by the Supreme Court and by counsel for appellants and appellees in their briefs and upon oral argument of these causes in the Supreme Court.

Dated September 24, 1937.

DOUGLAS W. MCGREGOR,
United States Attorney.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel for Appellants.
JOHN S. BURCHMORE,
Counsel for Humble Oil & Refining Company, et al., Appellees.

713 ORDER

It is ordered that the within and attached stipulation and narrative be, and the same are hereby, approved; and in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk is directed to proceed in accordance therewith.

THOMAS M. KENNERLY,
United States District Judge.

HOUSTON, TEXAS, *October 14, 1937.*

[File endorsement omitted.]

714 *Narrative statement of the evidence before I. C. C.*

Filed October 14, 1937

[Omitted. Printed side page. 509 ante.]

1013 INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

Texas and New Orleans Railroad Company Local Freight Tariff No. 884–B, I. C. C. No. Tex. 121; said schedule having been filed on February 13, 1930. Supplement No. 1 to said I. C. C. No. Tex. 121, filed July 25, 1935.

The pencil, ink, and stamped additions appearing on the copies hereto attached are expressly excluded from this certification, as none of said additions appear on said schedules so filed.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 14th day of August A. D. 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

1014 No supplement to this tariff will be issued except for the purpose of cancelling the tariff unless otherwise specifically authorized by the Commission. I. C. C. No. Tex. 121 (Cancels I. C. C. Tex. 12). R. C. T. No. 117 (Cancels R. C. T. No. 6). Tariff case File 6.

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

Local Freight Tariff No. 884–B (Cancels Tariff No. 884–A) containing Allowances to Private Industries for Switching Carload Freight at Baytown, Texas. Applicable on Interstate and Texas Intrastate Traffic. Issued February 11, 1930. Effective March 19, 1930.

The Texas and New Orleans Railroad Company [1] will pay to the Humble Oil and Refining Company an allowance of ninety (.90) cents par car, as compensation for service, performed by the Humble Oil and Refining Company, of switching carload freight, on which line haul transportation has been or will be performed, between loading or unloading tracks at the plant of the Humble Oil and Refining Company, on the one hand, and track connection with the main line of the Texas and New Orleans Railroad at Baytown, Texas, on the other hand.

Such switching service [1] performed by the Humble Oil and Refining Company with compensation therefor paid by the Texas and New Orleans Railroad Company, will be in lieu of the performance of such service by the Texas and New Orleans Railroad, as provided for in tariffs lawfully on file with the Interstate Commerce Commission or Railroad Commission of Texas requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks (R. C. T. Authority No. 230). Issued by S. G. Reed, F. T. M., 913 Franklin Ave., Houston, Texas. Authority 6473.

1015 Supplement No. 1 to R. C. T. No. 117. Supplement No. 1 to I. C. C. No. Tex. 121 (Cancels I. C. C. No. Tex. 121).

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

Supplement No. 1. Local Freight Tariff No. 884-B (Supplement No. 1 contains all changes) containing allowance to private industries for Switching Carload Freight at Baytown, Texas. Applicable only on Intrastate Traffic (Amend title page of tariff accordingly). Issued July 23, 1935. Effective August 26, 1935.

CANCELLATION NOTICE

Cancel Tariff [2] on interstate traffic only. No allowance in effect (see note). NOTE.—Tariff remains in effect on intrastate traffic only. Issued by S. G. Reed, Freight Traffic Manager, 913 Franklin Avenue, Houston, Texas. Authority 884–2.

1016 INTERSTATE COMMERCE COMMISSION, *Washington.*

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

The Beaumont, Sour Lake & Western Railway Company Terminal Switching Tariff No. 1457–B, I. C. C. No. 31; said schedule hav-

[1] Denotes changes in wording which result neither in increases nor reductions.
[2] Denotes increase

ing been filed on February 19, 1930. Supplement No. 1 to said I. C. C. No. 31, filed July 26, 1935.

The pencil and stamped additions appearing on the copies hereto attached are expressly excluded from this certification, as none of said additions appear on said schedules so filed.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 14th day of August, A. D. 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

1017 No Supplement to this Tariff will be issued except for the purpose of cancelling the Tariff unless otherwise specifically authorized by the Commission. R. C. T. No. 79 (Cancels R. C. T. No. 53). I. C. C. No. 31 (Cancels I. C. C. No. 11).

THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY

Terminal Switching Tariff No. 1457-B (Cancels Tariff No. 1457-A). Applicable at Baytown, Texas. Applicable on Interstate and Intrastate Traffic (R. C. T. Authority No. 23).

The Beaumont, Sour Lake & Western Railway Company will pay to Humble Oil and Refining Company an allowance of Ninety cents per loaded car,[3] on which line haul has been or will be performed as compensation for service performed of switching carload freight between unloading and loading tracks of Humble Oil and Refining Company and track connections with The Beaumont, Sour Lake & Western Railway Company at Baytown, Texas.

Such compensation will be in lieu of and relieve The Beaumont, Sour Lake & Western Railway Company of performing such service as provided in Tariffs lawfully on file with the Interstate Commerce Commission [3] or the Railroad Commission of Texas requiring the placement for unloading and the handling for forwarding of carload traffic to or from the tracks of the Humble Oil and Refining Company and connection with tracks of The Beaumont, Sour Lake & Western Railway Company. Issued February 14, 1930. Effective March 22, 1930. Issued by J. E. Bailey, General Freight Agent, Room 412 Union Station, Houston, Texas. File 4-260. Case 3.

1018 Supplement No. 1 to I. C. C. No. 31 (Cancels I. C. C. No. 31).

THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY (L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES)

Supplement No. 1 to Terminal Switching Tariff No. 1457-B. Cancels Tariff No. 1457-B on Interstate traffic only. Applicable at Baytown, Texas. Applicable on Interstate and Intrastate Traffic (R. C. T. Authority No. 23).

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[3] Denotes change in wording which results in neither increase nor decrease in charges.

CANCELLATION NOTICE [4]

Refer to Terminal Switching Tariff No. 1457-B, B. S. L. & W. Ry. I. C. C. No. 31, and cancel on Interstate Traffic only. Account allowance discontinued. Issued July 24, 1935. Effective August 26, 1935. Issued in compliance with Interstate Commerce Commission's order in thirteenth supplemental report in Ex Parte No. 104, of July 8, 1935. Issued by J. E. Bailey, General Freight Agent, Room 412, Union Station, Houston, Texas. File 4-260. (Case 3.) (150—Authy. 2733.)

1019 INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

Texas and New Orleans Railroad Company Local Freight Tariff No. 717-B, I. C. C. No. Tex. 123; said schedule having been filed on February 13, 1930.

Supplement No. 1 to said I. C. C. No. Tex. 123, filed June 15, 1935.

The stamped additions appearing on the copies hereto attached are expressly excluded from this certification, as none of said additions appear on said schedules so filed.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 14th day of August A. D., 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

1020 No supplement to this tariff will be issued except for the purpose of cancelling the tariff unless otherwise specifically authorized by the Commission. I. C. C. No. Tex. 123 (Cancels I. C. C. No. 1471). R. C. T. No. 113 (Cancels R. C. T. No. 202). Tariff Case File 6.

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

Local Freight Tariff No. 717-B (Cancels Tariff No. 717-A) containing Allowances to Private Industries for Switching Carload Freight at Chaison, Texas. Applicable on Interstate and Texas Intrastate Traffic. Issued February 11, 1930. Effective March 19, 1930.

The Texas and New Orleans Railroad Company [5] will pay to the Magnolia Petroleum Company an allowance of ninety (90) cents per car, as compensation for service, performed by the Magnolia Petroleum Company, of switching carload freight, on which line haul transportation has been or will be performed, between loading

[4] Indicates advance.
[5] Denotes changes in wording which result neither in increases nor reductions.

or unloading tracks at the plant of the Magnolia Petroleum Company, on the one hand, and track connection with the Texas and New Orleans Railroad at Chaison, Texas on the other hand.

Such switching service,[5] performed by the Magnolia Petroleum Company with compensation therefor paid by the Texas and New Orleans Railroad Company, will be in lieu of the performance of such service by the Texas and New Orleans Railroad, as provided for in tariffs lawfully on file with the Interstate Commerce Commission or Railroad Commission of Texas requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks (R. C. T. Circular No. 6911). Issued by S. G. Reed, F. T. M., 913 Franklin Ave., Houston, Texas. Authority 6488.

1021 Supplement No. 1 to R. C. T. No. 113. Supplement No. 1 to I. C. C. No. Tex. 123 (Cancels I. C. C. No. Tex. 123).

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

Supplement No. 1. Local Freight Tariff No. 717-B (Supplement No. 1 contains all changes) containing Allowances to Private Industries for Switching Carload Freight at Chaison, Texas. Applicable only on intrastate traffic (Amend title page of tariff accordingly). Issued June 13, 1935. Effective July 15, 1935.

CANCELLATION NOTICE

Cancel Tariff [6] on interstate traffic only. No allowance in effect. (See Note.)

NOTE.—Tariff remains in effect on intrastate traffic only. Issued by S. G. Reed, Freight Traffic Manager, 913 Franklin Avenue, Houston, Texas. Authority 717-2.

1022 INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

Texarkana and Fort Smith Railway Company Terminal Switching Tariff, I. C. C. No. 176; said schedule having been filed on June 5, 1926.

Supplement No. 2 to said I. C. C. No. 176, filed June 14, 1935.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 14th day of August A. D., 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[6] Denotes increase.

1023 No supplement to this Tariff will be issued except for the purpose of cancelling the tariff. R. C. T. No. 60 (Cancels No. R. C. T. No. 48). I. C. C. No. 176 (Cancels No. 161).

TEXARKANA AND FORT SMITH RAILWAY COMPANY, PORT ARTHUR ROUTE

Terminal Switching Tariff Port Arthur Route System Tariff No. 2860-C (Cancels P. A. R. No. 2860-B) Applicable at Chaison, Texas.

The Texarkana and Fort Smith Railway Company will pay to the Magnolia Petroleum Company an allowance of Ninety (90) Cents per car as compensation for service performance of switching carload of freight between loading and unloading tracks of the Magnolia Petroleum Company and Track Connections with the Texarkana and Fort Smith Railway Company at Chaison, Texas.

Such compensation will be in lieu of, and relieve the Texarkana and Fort Smith Railway Company of performing such service as provided in tariffs lawfully on file with the Interstate Commerce Commission or the Railroad Commission of Texas, requiring the placement for unloading and the handling for forwarding of carload traffic to or from the tracks of the Magnolia Petroleum Company and the connection with the tracks of the Texarkana and Fort Smith Railway Company at Chaison, Tex.

Railroad Commission of Texas Circular No. 6911[7] of April 23, 1926. Issued June 2, 1926. Effective July 10, 1926. Issued by, J. O. Hamilton, G. F. A. T. & Ft. S. Railway Company, Texarkana, Texas. Authority No. 12089.

1024 Supplement No. 2 to I. C. C. No. 176 (T. & Ft. St. Ry.-Series). Cancels I. C. C. No. 176). (Supplement No. 2 contains all changes from the original tariff that are effective on the date hereof.)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

TERMINAL SWITCHING TARIFF

Supplement No. 2. (Cancels P. A. R. System No. 2860-C.) (Supplement No. 2 contains all changes from the original tariff that are effective on the date hereof) to Port Arthur Route System Tariff No. 2860-C applicable at Chaison, Texas, showing Switching Allowance to The Magnolia Petroleum Company. Issued June 13, 1935. Effective July 15, 1935. Issued in compliance with Tenth Supplemental Report in I. C. C. Docket Ex Parte 104 Part II of May 14, 1935.

CANCELLATION NOTICE[8]

Refer to and cancel the above described tariff on Interstate Traffic. B. A. Rogers, A. G. F. A., The K. C. S. Ry. Co., Kansas City, Mo.

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[7] Denotes change without advance or reduction.
[8] Denotes advance.

L. V. Beatty, G. F. A., The K. C. S. Ry. Co., Kansas City, Mo. Issued by J. R. Mills, A. F. T. M., The K. C. S. Ry. Co., 11th & Wyandotte Sts., Kansas City, Mo. Authority No. 12089.

1025 INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

Texarkana and Fort Smith Railway Company Tariff, I C. C. No. 158, said schedule having been filed February 27, 1924.

Texarkana and Fort Smith Railway Company Tariff, I. C. C. No. 178, said schedule having been filed June 5, 1926.

Supplement No. 1 to said I. C. C. No. 178, filed February 3, 1934.

Supplement No. 2 to said I. C. C. No. 178, filed July 26, 1935.

Texas and New Orleans Railroad Company Terminal Switching Tariff No. 773, I. C. C. No. 1465, said schedule having been filed March 1, 1924.

Texas and New Orleans Railroad Company Local Freight Tariff No. 773-A, I. C. C. No. 119, said schedule having been filed February 13, 1930.

Texas and New Orleans Railroad Company Local Freight Tariff No. 773-B, I. C. C. No. 270, said schedule having been filed July 25, 1935.

The pencil marks and stamp additions appearing on the copies hereto attached are expressly excluded from this certificate, as no such marks or additions appear on the originals so filed.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 14th day of August A. D., 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

1026 REDUCTIONS

No Supplements to this Tariff will be issued except for the purpose of Cancelling the Tariff. R. C. T. No. 46. I. C. C. No. 158.

TEXARKANA AND FORT SMITH RAILWAY COMPANY, PORT ARTHUR ROUTE

Terminal Switching Tariff, Port Arthur Route, System Tariff No. 2880, applicable at Port Arthur, Texas.

The Texarkana and Fort Smith Railway Company will pay to the Gulf Companies an allowance of Ninety (90) cents per car, as com-

pensation for service performed of switching carload of freight between loading and unloading tracks of the Gulf Companies and Track Connections with the Texarkana and Fort Smith Railway Company at Port Arthur, Texas.

Such compensation will be in lieu of, and relieve the Texarkana and Fort Smith Railway Company of performing such service as provided in Tariffs lawfully on file with the Interstate Commerce Commission or the Railroad Commission of Texas, requiring the placement for unloading and the handling for forwarding of carload traffic to or from the tracks of the Gulf Companies and the connection with the tracks of the Texarkana and Fort Smith Railway Company at Port Arthur, Texas. Issued February 25th, 1924. Effective March 31st, 1924. Issued by J. O. Hamilton, G. F. A., T. & Ft. S. Railway Co., Texarkana, Texas. Authority No. 12185.

1027 No Supplements to this Tariff will be issued except for the purpose of Cancelling the Tariff. R. C. T. No. 62 (Cancels R. C. T. No. 46). I. C. C. No. 178 (Cancels I. C. C. No. 158).

TEXARKANA AND FORT SMITH RAILWAY CO., PORT ARTHUR ROUTE

Terminal Switching Tariff, Port Arthur Route, System Tariff No. 2880–A (Cancels P. A. R. No. 2880), applicable at Port Arthur, Texas.

The Texarkana and Fort Smith Railway Company will pay to the Gulf Companies an allowance of Ninety (90) cents per car, as compensation for service performed of switching carload of freight between loading and unloading tracks of the Gulf Companies and Track Connections with the Texarkana and Fort Smith Railway Company at Port Arthur, Texas.

Such compensation will be in lieu of, and relieve the Texarkana and Fort Smith Railway Company of performing such service as provided in Tariffs lawfully on file with the Interstate Commerce Commission or the Railroad Commission of Texas, requiring the placement for unloading and the handling for forwarding of carload traffic to or from the tracks of the Gulf Companies and the connection with the tracks of the Texarkana and Fort Smith Railway Company at Port Arthur, Texas.

List of tariffs supplemented hereby

Supplement No. to		Supplements that contain all changes from the original tariff that are effective on the date hereof		Texarkana and Fort Smith Railway Company			
I. C. C. No.	Tariff No.	To I.C.C. No.	To tariff No.	I. C. C. No.	R. C. T. No.	Tariff No. (except as noted)	Description
1	1	1	1	176	60	2860-C	Switching charges at Chaison, Tex.
1	1	1	1	178	62	2880-A	Switching charges at Port Arthur, Tex.
1	1	1	1	177	61	2881-A	Switching charges at Port Arthur and Port Neches, Tex.
1	1	1	1	179	63	2902-A	Switching charges at Smiths Bluff, Tex.
1	1	1	1	218		T. T. 211-C	Rules and regulations governing the manufacturing in transit of of black plate, tin plate, etc., at Port Arthur, and West Port Arthur, Tex.
1	1	1	1	215		T. T. 222-B	Rules and regulations governing transit privileges on bagging, cotton bale coverings, etc., at Beaumont & Port Arthur, Tex.
5	5	1, 4, and 5	1, 4, and 5	211		T. T. 239-B	Rules and regulations governing manufacturing in transit of lumber into box material at Texarkana, Ark.-Tex.
1	1	1	1	216		T. T. 260	Rules and regulations governing stopping in transit of petroleum and/or products at T. & Ft. S. Ry stations.
1	1	1	1	219		T. T. 270	Rules and regulations governing stopping in transit of sulphur (brimstone) at Texarkana, Ark.-Tex.
1	1	1	1	220		T. T. 273	Rules and regulations governing manufacturing in transit of lumber at Port Arthur, Tex.
15	15	11, 14, and 15	11, 14, and 15	194		Cir. 32-E	Terminal charges at the port of Port Arthur, Tex.
1	1	1	1	209		Cir. 130-H	Absorption of terminal charges on coastwise traffic at Port Arthur, Tex.
2	2	1 and 2	1 and 2	210		Cir. 131-J	Absorption of terminal charges on import and export traffic at Port Arthur, Tex.

Railroad Commission of Texas Circular No. 6911[1] of April 23, 1926. Issued June 2, 1926. Effective July 10, 1926. Issued by J. O. Hamilton, G. F. A., T. & Ft. S. Ry. Co., Texarkana, Texas. Authority No. 12185.

1028 Supplement to R. C. T. Nos. Shown on Page No. 2. Supplement to I. C. C. Nos. Shown on Page No. 2.

The Kansas City Southern Railway Company

Supplement to Freight Tariffs shown herein. Supplements Announcing Adoption. Effective February 1, 1934, the tariffs shown on Page No. 2 hereof or as amended, became the tariffs of the Kansas City Southern Railway Company, as per its adoption notice, Freight Tariff No. 3308, I. C. C. No. 4779. Issued February 2, 1934. Effective February 1, 1934. Issued under authority of Rule 9 (i) of In-

[1] Denotes change without advance or reduction.

terstate Commerce Commission Tariff Circular No. 20, and order of the Interstate Commerce Commission, dated December 27, 1932, and October 4, 1933, in Finance Docket No. 9164. J. O. Hamilton, A. G. F. & P. A., The K. C. S. Ry. Co., Shreveport, La. B. A. Rogers, A. G. F. A., The K. C. S. Ry. Co., Kansas City, Mo. L. V. Beatty, G. F. A., The K. C. S. Ry. Co., Kansas City, Mo. Issued by J. R. Mills, A. F. T. M., The K. C. S. Ry. Co., Kansas City, Mo. Authority No. 12914.

1029 Supplement No. 2 to I. C. C. No. 178 (T. & Ft. S. Ry. Series). (Cancels I. C. C. No. 178). (Supplement No. 2 contains all changes from the original tariff that are effective on the date hereof.)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY TERMINAL SWITCHING TARIFF

Supplement No. 2 (Cancels P. A. R. System No. 2880-A). (Supplement No. 2 contains all changes from the original tariff that are effective on the date hereof) to Port Arthur Route System Tariff No. 2880-A, applicable at Port Arthur, Texas, showing Switching Allowance to The Gulf Refining Company. Issued July 23, 1935. Effective September 3, 1935. Issued in compliance with Twenty First Supplemental Report in I. C. C. Docket, Ex Parte 104, Part II, of July 11, 1935.

CANCELLATION NOTICE[8]

Refer to and cancel the above described tariff on Interstate Traffic. B. A. Rogers, A. G. F. A., The K. C. S. Ry. Co., Kansas City, Mo. L. V. Beatty, G. F. A., The K. C. S. Ry. Co., Kansas City, Mo. Issued by J. O. Hamilton, A. A. G. F. A., The K. C. S. Ry. Co., Kansas City, Mo. J. R. Mills, A. F. T. M., The K. C. S. Ry. Co., 11th & Wyandotte Sts., Kansas City, Mo. Authority No. 12089.

1030 No supplement to this tariff will be issued except for the purpose of cancelling the Tariff. R. C. T. No. 193. I. C. C. No. 1465. Tariff Case File 6.

TEXAS AND NEW ORLEANS RAILROAD COMPANY

Terminal Switching Tariff No. 773 applicable at Port Arthur and West Port Arthur, Texas

The Texas and New Orleans Railroad Company will pay to the Texas Company at Port Arthur, Texas, and the Gulf Refining Company at West Port Arthur, Texas, an allowance of ninety (90) cents per car, as compensation for service performed of switching carload freight between loading and unloading tracks of the Texas Company at Port Arthur, Texas, and the Gulf Refining Company at West Port Arthur, Texas, and track connection with the Texas and New Orleans Railroad Company at Port Arthur, and West Port Arthur, Texas, respectively.

[8] Denotes advance.

Such compensation will be in lieu of, and relieve the Texas and New Orleans Railroad Company of performing such service as provided in Tariffs lawfully on file with the Interstate Commerce Commission or the Railroad Commission of Texas, requiring the placement for unloading and the handling for forwarding of carload traffic to or from the tracks of the Texas Company at Port Arthur, Texas, and the Gulf Refining Company at West Port Arthur, Texas, and the connection with the tracks of the Texas and New Orleans Railroad Company at Port Arthur and West Port Arthur, Texas, respectively. Issued February 29, 1924. Effective on Interstate Traffic April 3, 1924. Effective on Interstate (Local Texas) Traffic March 7, 1924. Authority No. 2453. Issued by C. K. Dunlap, Traffic Manager, Houston, Texas. C. W. Owen, Assistant Traffic Manager, Houston, Texas. A. R. Atkinson, Asst. General Freight Agent, Houston, Texas. G. Reed, Asst. to Traffic Manager, Houston, Texas. T. G. Beard, General Freight Agent, Houston, Texas. J. B. Brasher, Asst. General Freight Agt., Houston, Texas. M. L. No. 603.

1031 No supplement to this tariff will be issued except for the purpose of cancelling the tariff unless otherwise specifically authorized by the Commission. I. C. C. No. Tex. 119 (cancels I. C. C. No. 1465). Tariff Case File 6. R. C. T. No. 115 Cancels R. C. T. No. 193.

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

Local Freight Tariff No. 773-A (cancels Tariff No. 773)—Containing Allowances to Private Industries for Switching Carload Freight at Port Arthur, Texas, West Port Arthur, Texas. Applicable on Interstate and Texas Intrastate Traffic. Issued February 11, 1930. Effective March 19, 1930.

The Texas and New Orleans Railroad Company [s] will pay to The Texas Company at Port Arthur, Texas, or to the Gulf Refining Company at West Port Arthur, Texas (as the case may be) an allowance ninety (90) cents per car, as compensation for service, performed by The Texas Company, or the Gulf Refining Company (as the case may be), of switching carload freight, on which line haul transportation has been or will be performed, between loading or unloading tracks at the plant of The Texas Company at Port Arthur, Texas, or at the plant of the Gulf Refining Company at West Port Arthur, Texas (as the case may be), on the one hand, and track connection with the Texas and New Orleans Railroad at Port Arthur, Texas, or West Port Arthur, Texas (as the case may be), on the other hand.

Such switching services,[s] performed by The Texas Company, or the Gulf Refining Company (as the case may be), with compensation therefor paid by the Texas and New Orleans Railroad Com-

[s] Denotes changes in wording which result neither in increases nor reductions.

pany will be in lieu of the performance of such service by the Texas and New Orleans Railroad, as provided for in tariffs lawfully on file with the Interstate Commerce Commission or Railroad Commission of Texas requiring the placing for unloading and the handling for forwardin gof carload freight to and from locations on connecting industry tracks (R. C. T. Circular No. 6911). Authority 6471. Issued by S. G. Reed, F. T. M., 913 Franklin Ave., Houston, Texas.

1032 No supplement to this tariff will be issued except for the purpose of cancelling the tariff unless otherwise specifically authorized by the Commission. I. C. C. No. Tex. 270 (cancels I. C. C. No. Tex. 119). R. C. T. No. 210 (cancels R. C. T. No. 115). Tariff Case File 6.

TEXAS AND NEW ORLEANS RAILROAD COMPANY (SOUTHERN PACIFIC LINES)

Local Freight Tariff No. 773-B (cancels Tariff No. 773-A). Containing allowances to private industries for switching carload freight at Port Arthur, Texas, West Port Arthur,[9] Texas. Applicable on interstate and Texas intrastate traffic. Issued July 23, 1935. Effective September 3, 1935.

The Texas and New Orleans Railroad Company will pay to The Texas Company at Port Arthur, Texas, or to the Gulf Refining Company[9] at West Port Arthur, Texas (as the case may be) (see Note), an allowance of ninety (90) cents per car, as compensation for service performed by The Texas Company or the Gulf Refining Company[9] (as the case may be) (see Note), of switching carload freight, on which line haul transportation has been or will be performed, between loading or unloading tracks at the plant of The Texas Company at Port Arthur, Texas, or at the plant of the Gulf Refining Company[9] at West Port Arthur, Texas (as the case may be) (see Note), on the one hand, and track connection with the Texas and New Orleans Railroad at Port Arthur, Texas, or West Port Arthur,[9] Texas (as the case may be) (see Note), on the other hand.

Such switching service, performed by The Texas Company, or the Gulf Refining Company[9] (as the case may be) (see Note), with compensation therefor paid by the Texas and New Orleans Railroad Company will be in lieu of the performance of such service by the Texas and New Orleans Railroad, as provided for in tariffs lawfully on file with the Interstate Commerce Commission or Railroad Commission of Texas requiring the placing for unloading and the handling for forwarding of carload freight to and from locations on connecting industry tracks.

NOTE.—The allowance to the Gulf Refining Company at West Port Arthur, Texas, is applicable only on intrastate traffic. Said[10]

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[9] Applicable only on intrastate traffic.
[10] Denotes increase.

allowance is hereby cancelled on interstate traffic. No allowance in effect. Authority 773-2. Issued by S. G. Reed, Freight Traffic Manager, 913 Franklin Avenue, Houston, Texas.

1033 INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached, consisting of forty-two photostatic sheets, are true and correct copies of pages of schedules of rates and charges, the originals of which are on file with the said Interstate Commerce Commission in my custody as Secretary of said Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 7th day of August A. D. 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

1034 Loose leaf plan. No supplement to this tariff will be issued except for the purpose of cancelling the tariff. I. C. C. No. 4519. (Cancels I. C. C. No. 4444.)

ILLINOIS CENTRAL RAILROAD COMPANY (SOUTHERN LINES)

The Yazoo & Mississippi Valley R. R. Co.

2-A (cancels A-12345). Local Freight Tariff containing Rates, Rules, and Regulations governing switching, absorptions, drayage, handling, demurrage and storage, elevation, transferring through freight, reconsigning, diversion, holding for orders of carload freight, and other terminal services at all stations on Illinois Central Railroad (southern lines) and The Yazoo & Mississippi Valley R. R. Indexed on Pages 3 to 18, inclusive. For Classifications governing, see Page 19. Issued April 27, 1911. Effective June 30, 1911. Issued by David W. Longstreet, General Freight Agent, Memphis, Tenn. F. B. Bowes, Vice-President, Chicago, Ill. Donald Rose, Freight Traffic Manager, Chicago, Ill.

1035 General Rates, Rules, and Regulation Governing Switching of Cars

(Applicable at stations on Illinois Central R. R. (Southern Lines) and The Yazoo & Mississippi Valley R. R., indexed on pages 3 to 18, inclusive, except as otherwise specifically provided herein.) Note—Any exception which may be made to these rates, rules, and regulations will be clearly stated under proper specific heading.

Rule 1—Application of Rates.—The rates contained in this tariff apply on carloads only, unless specified to the contrary herein, and cover the movement of a loaded car to switches, tracks, warehouses, and industries shown herein, and the movement of the empty car

from such switches, tracks, warehouses, or industries; or the placing of an empty car at switches, tracks, warehouses, and industries shown herein and the movement of the loaded car from such switches, tracks, warehouses, and industries, unless specified to the contrary herein. If an empty car is ordered for loading, and the service of switching or placing it has been performed, and the car is not loaded, the regular switching charge, as contained in this tariff, will be assessed against the person, firm, or corporation ordering such car.

Rule 2—Switching Service at option of These Railroads.—Switching service for other railroad companies, in the movement of traffic to and from points on, and/or reached by These Railroads, from and to switches, tracks, warehouses, and industries reached by, and/or connecting with the tracks of These Railroads, as specified in this tariff, will be performed only at the option and convenience of These Railroads.

Rule 3—Minimum Weight.—These Railroads will not switch cars for receipt or delivery of less than 10,000 pounds of freight, except in cases where the carload minimum weight of the commodity in the tariff or classification is less than 10,000 pounds.

Exception.—This rule does not apply on cotton going into or out of compresses, or to articles of exceptionally heavy or bulky nature.

This rule does not apply at Louisville, Henderson, Paducah, Ky., Memphis, Tenn., New Orleans, La., Birmingham, Ala., and points in Birmingham Group (see pages 78 to 96 inclusive.)

Rule 4—Cars subject to Demurrage. All cars switched from and to switches, tracks, warehouses, and industries covered by this Tariff will be subject to the established demurrage rates, rules, and regulations published in this tariff in force at point at which cars are handled.

Rule 5—Absorption of Switching Charges.—(a) At points indexed on pages 3 to 18, inclusive, These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, but not in excess of Ten (10) Dollars per car, except as otherwise provided herein, provided such cars contain freight traffic (except Coal and Coke, see Rule 6, and except Logs, Bolts, Billets, etc.; see Paragraph e) from or destined to points from or to which These Railroads compete with other railroads, which pays These Railroads a freight rate or charge other than a switching rate or charge; also on Cement from Kosmosdale, Ky., to Henderson and Owensboro, Ky. On freight traffic from or to competitive points, which pays These Railroads a switching rate or charge only, and on freight traffic from or to non-competitive points, These Railroads will not absorb the switching charge of other railroads.

(b) These Railroads will not absorb the switching charges of connecting or switching railroads performing the switching service on freight traffic from or to competitive points when other railroads do not compete for the traffic in question.

(c) These Railroads will not absorb the switching charges from or to switches, tracks, warehouses, or industries reached by, and/or connecting with the tracks of other connecting or switching railroads on shipments of material for the Illinois Central Railroad or The Yazoo & Mississippi Valley Railroad.

(d) This rule will not apply on Hard Coal, Soft Coal, or Coke, see Rule 6.

(e) These Railroads will not absorb any switching charges on logs; handle, heading, hub, shingle, spoke or stave bolts; handle, spoke or single and double tree billets, or hoop poles, when from stations on These Railroads or when from stations on connecting lines, when the reshipping rates shown in Tariffs 602-B, I. C. C. No. 4097, 590-H, I. C. C. No. 4364, and supplements thereto and reissues thereof, are applied.

Rule 6—Absorption of Switching Charges on Coal and Coke.—On hard coal, soft coal, or coke, These Railroads will, except as otherwise specifically provided in this tariff, absorb switching charges of other connecting railroads lawfully on file with the Interstate Commerce Commission at competitive points as defined in Rule 8, but not in excess of $2.00 per car. If switching charges of connecting railroads exceed $2.00 per car, such excess will be in addition to the rate of freight.

Rule 7—Non-competitive points.—The term "non-competitive points," as used in this tariff, will be understood to mean:

(a) Points reached only by the rails of the Illinois Central R. R. (Southern Lines) and/or The Yazoo & Mississippi Valley R. R., except as provided in Rule 8 (b).

(b) Points reached by the rails of railroads having track connection with the Illinois Central R. R. (Southern Lines and/or The Yazoo & Mississippi Valley R. R. only.

Rule 8—Competitive points.—(a) The term "competitive points," as used in this tariff, will be understood to mean all points not included in the foregoing description of "non-competitive points."

(b) Coal mines on Illinois Central R. R. will be considered competitive points on coal and coke traffic.

(c) The competitive points, or junction points of I. C. R. R. and The Y. & M. V. R. R. with other Railroads are indicated by (*) in alphabetical list of stations shown on pages 3 to 18 inclusive.

Rule 9—Switching Charges on Traffic Forwarded or Received via These Railroads.—No switching charge will be assessed by These Railroads for switching service performed by them at destination on carload freight arriving via These Railroads and delivered direct to switches, tracks, warehouses, or industries reached by, and/or connecting with the tracks of, These Railroads, or upon carload freight at points of origin received direct from switches, tracks, warehouses, or industries reached by, and/or connecting with the tracks of These Railroads and forwarded by These Railroads.

1036 Rule 1—Application of Rates.—The rates contained in this tariff apply on carloads only, unless specified to the contrary

herein, and cover the movement of a loaded car to switches, tracks, warehouses, and industries shown herein, and the movement of the empty car from such switches, tracks, warehouses, or industries; or the placing of an empty car at switches, tracks, warehouses, and industries shown herein and the movement of the loaded car from such switches, tracks, warehouses, and industries, unless specified to the contrary herein. If an empty car is ordered for loading, and the service of switching or placing it has been performed, and the car is not loaded, the regular switching charge, as contained in this tariff, will be assessed against the person, firm, or corporation ordering such car.

Rule 2—Switching Service at Option of These Railroads.—Switching service for other railroad companies, in the movement of traffic to and from points on, and (or) reached by These Railroads, from and to switches, tracks, warehouses, and industries reached by, and (or) connecting with the tracks of These Railroads, as specified in this Tariff, will be performed only at the option and convenience of These Railroads.

Rule 3—Minimum Weights.—(a) Switching service will be performed only on carload traffic, and trap and station order cars as described below:

(b) The term "carload traffic" as used herein is understood to mean traffic tendered on one bill of lading from one consignor to one consignee and destination on the same date, for which rates are provided in tariffs and classifications lawfully on file with the Interstate Commerce Commission as to interstate traffic, or the several State Commissions as to intra-state traffic, when tendered in quantities of not less than 10,000 pounds, provided that when such tariffs or classifications provide a carload minimum of less than 10,000 pounds, such minimum will apply; provided further, that no minimum weight will be required on cotton handled into or out of compresses or on articles requiring special facilities for loading and unloading where such facilities are not provided.

(c) A trap car is a car loaded with one or more less carload shipments, aggregating 10,000 pounds or more, at points on private or assigned siding for distribution at the railway's warehouse into regular package or other cars for forwarding.

(d) A station order car is a car loaded in station order with miscellaneous less carload shipments aggregating 10,000 pounds or more. A station order car differs from a trap car in that the purpose of the station order car is to permit its being put into trains without rehandling contents at railway's freight warehouse.

(e) No swiching service will be performed on any inbound less than carload shipment weighing less than 10,000 pounds.

(f) This rule does not apply at Louisville, Henderson, Paducah, Ky., Memphis, Tenn., Birmingham, Ala., and points in Birmingham Group (see pages 78 to 96 inclusive).

Rule 4—Cars Subject to Demurrage.—All cars switched from and to switches, tracks, warehouses, and industries covered by this Tariff

will be subject to the established demurrage rates, rules, and regulations published in Tariffs 8–B and 10–C, I. C. C. Nos. 4939 and 5051, respectively, supplements thereto and reissues thereof, in force at point at which cars are handled.

Rule 5—Absorption of Switching Charges.—(a) At points indexed on pages 3 to 18 inclusive These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, except as otherwise provided herein, provided such cars contain freight traffic (except Cement from Kosmosdale, Ky., see Rule 6; except Coal and Coke, see Rule 7; except Benzine, Gasoline, Naphtha, and Gas Oil, carloads, to Central City, Elizabethtown, Gracey, Morganfield, Nortonville, and Providence, Ky., see Rule 7½; and except Logs, Bolts, Billets, etc., see Paragraph e) from or destined to competitive points (see Rule 9), which pays These Railroads a freight rate or charge other than a switching rate or charge; also on Stone from Cedar Bluff, Ky., to Greenville, Miss. On freight traffic from or to competitive points, which pays These Railroads a switching rate or charge only, and on freight traffic from or to non-competitive points, except as otherwise provided in this Rule and Rules 6 and 7, These Railroads will not absorb the switching charge of other railroads.

(b) These Railroads will not absorb the switching charges of connecting or switching railroads performing the switching service on freight traffic from or to competitive points when other railroads do not compete for the traffic in question, except as provided in Rules 6, 7, and 7½.

(c) These Railroads will not absorb the switching charges from or to switches, tracks, warehouses, or industries reached by, and (or) connecting with the tracks of other connecting or switching railroads on shipments of material for the Illinois Central Railroad or the Yazoo & Mississippi Valley Railroad.

(d) This rule will not apply on Hard Coal, Soft Coal, or Coke, see Rule 7.

(e) These Railroads will not absorb any switching charges on Logs; Bolts; Handle, Pole, Shaft, Spoke, Single, or Double Tree Billets, or Hoop Poles, when from stations on These Railroads or when from stations on connecting lines when the reshipping rates shown in Tariffs 602–E, I. C. C. No. 4851, 590–K, I. C. C. No. 4854, 692–C, I. C. C. No. 4853, supplements thereto or reissues thereof, are applied.

Rule 6.—Absorption of Switching Charges on Cement from Kosmosdale, Ky.—At competitive Points indexed on pages 3 to 18 inclusive, These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, but not in excess of Ten ($10.00) Dollars per car, on Cement from Kosmosdale, Ky.

Rule 7.—Absorption of Switching Charges on Coal and Coke.—On hard coal, soft coal, or coke, These Railroads will, except as

otherwise specifically provided in this tariff, absorb switching charges of other connecting railroads lawfully on file with the Interstate Commerce Commission at competitive points as defined in Rule 9, but not in excess of $2.00 per car. If switching charges of connecting railroads exceed $2.00 per car, such excess will be in addition to the rate of freight.

Rule 7½.—Absorption of Switching Charges on Benzine, Gasoline, Naphtha and Gas Oil, Carloads, to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky.—These Railroads will absorb the switching charges of other connecting or switching railroads (at point of origin or destination), lawfully on file with the Interstate Commerce Commission, but not exceeding Ten ($10.00) Dollars per car, on Benzine, Gasoline, Naphtha, and Gas, Oil, carloads, from competitive points (see Rule 9, page 21) to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky.

Rule 8.—Noncompetitive Points.—The term "non-competitive points," as used in this tariff, will be understood to mean:

(a) Points reached only by the rails of the Illinois Central R. R. (Southern Lines) and (or) the Yazoo & Mississippi Valley R. R., except as provided in Rule 9 (b).

(b) Points reached by the rails of railroads having track connection with the Illinois Central R. R. (Southern Lines) and (or) the Yazoo & Mississippi Valley R. R. only.

(No change on this page.)

1037 Rule 1—Application of rates.—The rates contained in this tariff apply on carloads only, unless specified to the contrary herein, and cover the movement of a loaded car to switches, tracks, warehouses and industries shown herein; and the movement of the empty car from such switches, tracks, warehouses or industries; or the placing of an empty car at switches, tracks, warehouses and industries shown herein and the movement of the loaded car from such switches, tracks, warehouses and industries, unless specified to the contrary herein. If an empty car is ordered for loading and the service of switching or placing it has been performed, and the car is not loaded, the regular switching charge, as contained in this tariff, will be assessed against the person, firm or corporation ordering such car.

Rule 2—Switching Service at Option of These Railroads.—Switching service for other railroad companies, in the movement of traffic to and from points on, and (or) reached by These Railroads, from and to switches, tracks, warehouses, and industries reached by, and (or) connecting with the tracks of These Railroads, as specified in this Tariff, will be performed only at the option and convenience of These Railroads.

Rule 3—Minimum Weights.—(a) Switching service will be performed only on carload traffic, and trap and station order cars as described below.

(b) The term "carload traffic" as used herein is understood to mean traffic tendered on one bill of lading from one consignor to one consignee and destination on the same date, for which rates are provided in tariffs and classifications lawfully on file with the Interstate Commerce Commission as to interstate traffic, or the several State Commissions as to intra-state traffic, when tendered in quantities of not less than 10,000 pounds, provided that when such tariffs or classifications provide a carload minimum of less than 10,000 pounds, such minimum will apply, provided further, that no minimum weight will be required on cotton handled into or out of compresses or on articles requiring special facilities for loading and unloading where such facilities are not provided.

(c) A trap car is a car loaded with one or more less carload shipments, aggregating 10,000 pounds or more, at points on private or assigned siding for distribution at the railway's warehouse into regular package or other cars for forwarding.

(d) A station order car is a car loaded in station order with miscellaneous less carload shipments aggregating 10,000 pounds or more. A station order car differs from a trap car in that the purpose of the station order car is to permit its being put into trains without rehandling contents at railway's freight warehouse.

(e) No switching service will be performed on any inbound less than carload shipment weighing less than 10,000 pounds.

(f) This rule does not apply at Louisville, Henderson, Paducah, Ky., Memphis, Tenn., Birmingham, Ala., and points in Birmingham Group (see pages 78 to 96 inclusive).

Rule 4—Cars Subject to Demurrage.—All cars switched from and to switches, tracks, warehouses, and industries covered by this Tariff will be subject to the established demurrage rates, rules, and regulations published in Tariff 13823–B, Agent Fairbank's I. C. C. No. 8, supplements thereto and reissues thereof, in force at point at which cars are handled.

Rule 5—Absorption of Switching Charges.—(a) At points indexed on pages 3 to 18, inclusive, These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, except as otherwise provided herein, provided such cars contain freight traffic (except Cement from Kosmosdale, Ky., see Rule 6; except Coal and Coke, see Rule 7; except Benzine, Gasoline, Naphtha, and Gas Oil, carloads, to Central City, Elizabethtown, Gracey, Morganfield, Nortonville, and Providence, Ky., see Rule 7½, and except Logs, Bolts, Billets, etc., see Paragraph e) from or destined to competitive points (see Rule 9), which pays These Railroads a freight rate or charge other than a switching rate or charge; also on Stone from Cedar Bluff, Ky., to Greenville, Miss. On freight traffic from or to competitive points, which pays These Railroads a switching rate or charge only, and on freight traffic from or to non-competitive points, except as otherwise provided in this Rule and Rules 6 and 7, These Railroads will not absorb the switching charge of other railroads.

(b) These Railroads will not absorb the switching charges of connecting or switching railroads performing the switching service on freight traffic from or to competitive points when other railroads do not compete for the traffic in question, except as provided in Rules 6, 7, and 7½.

(c) These Railroads will not absorb the switching charges from or to switches, tracks, warehouses, or industries reached by, and (or) connecting with the tracks of other connecting or switching railroads on shipments of material for the Illinois Central Railroad Co. or The Yazoo and Mississippi Valley Railroad Co.

(d) This rule will not apply on Hard Coal, Soft Coal, or Coke, see Rule 7.

(e) These Railroads will not absorb any switching charges on Logs; Bolts; Handle, Pole, Shaft, Spoke, Single or Double Tree Billets, or Hoop Poles, when from stations on These Railroads or when from stations on connecting lines, when the reshipping rates shown in Tariffs 602-H, I. C. C. No. 6048, 590-M, I. C. C. No. 5995, 692-E, I. C. C. No. 5939, supplements thereto or reissues thereof, are applied.

Rule 6—Absorption of Switching Charges on Cement from Kosmosdale, Ky.—At competitive Points indexed on pages 3 to 18, inclusive, These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, but not in excess of $12.50 per car, on Cement from Kosmosdale, Ky.

Rule 7—Absorption of Switching Charges on Coal and Coke.—On hard coal, soft coal, or coke These Railroads will, except as otherwise specifically provided in this tariff, absorb switching charges of other connecting railroads lawfully on file with the Interstate Commerce Commission at competitive points as defined in Rule 9, but not in excess of $4.00 [1] per car. If switching charges of connecting railroads exceed $4.00 [1] per car, such excess will be in addition to the rate of freight.

Rule 7½—Absorption of Switching Charges on Benzine, Gasoline, Naphtha and Gas Oil, Carloads, to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky.—These Railroads will aborb the switching charges of other connecting or switching railroads (at point of origin or destination), lawfully on file with the Interstate Commerce Commission, but not exceeding $12.50 per car, on Benzine, Gasoline, Naphtha, and Gas Oil, carloads, from competitive points (see Rule 9, page 21), to Central City, Elizabethown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky.

Rule 8—Non-competitive Points.—The term "non-competitive points," as used in this tariff, will be understood to mean:

(a) Points reached only by the rails of the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co., except as provided in Rule 9 (b).

[1] Reduction.

(b) Points reached by the rails of railroads having track connection with the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co. only.

1038 Loose leaf plan. No Supplement to this Tariff will be issued except for the purpose of cancelling the Tariff. I. C. C. No. 6700 (Cancels I. C. C. No. 4519).

ILLINOIS CENTRAL RAILROAD COMPANY (SOUTHERN LINES)

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

2-B (cancels 2-A). Local Freight Tariff containing Rates, Rules and Regulations governing Switching, Absorptions, Drayage, Handling, Demurrage, Storage, Elevation, Transferring Through Freight, and Other Terminal Services at all stations on Illinois Central Railroad Company (Southern Lines) and The Yazoo and Mississippi Valley Railroad Company. Indexed on Pages 3-4 to A-13, inclusive. For Classifications governing, see Page A-14. Issued September 29, 1923. Effective November 6, 1923. Issued by Jos. Hattendorf, General Freight Agent, Memphis, Tenn. D. W. Longstreet, Traffic Manager, Chicago, Ill. V. D. Fort, Ass't Traffic Manager, Chicago, Ill. C. C. Cameron, General Freight Agent, I. C. R. R. Co. (Northern & Western Lines), Chicago, Ill.

1039 First revised page 1 cancels original page 1. Tariff No. 2-B, I. C. C. No. 6700.

General Rates, Rules and Regulations Governing Switching of Cars.

(Applicable at stations on Illinois Central R. R. Co. (Southern Lines) and The Yazoo and Mississippi Valley Railroad Company, indexed on pages A-4 to A-13 inclusive, except as otherwise specifically provided herein.)

Note.—Any exception which may be made to these rates, rules, and regulations will be clearly stated under proper specific heading.

Rule 1—Application of rates.—The rates contained in this tariff apply on carloads only, unless specified to the contrary herein, and cover the movement of a loaded car to switches, tracks, warehouses, and industries shown herein, and the movement of the empty car from such switches, tracks, warehouses, or industries; or the placing of an empty car at switches, tracks, warehouses, and industries shown herein and the movement of the loaded car from such switches, tracks, warehouses, and industries, unless specified to the contrary herein. If an empty car is ordered for loading, and the service of switching or placing it has been performed, and the car is not loaded, the regular switching charge, as contained in this tariff, will be assessed against the person, firm, or corporation ordering such car.

Rule 2—Switching service at option of These Railroads.—Switching service for other railroad companies in the movement of traffic to and from points on, and (or) reached by These Railroads, from and to switches, tracks, warehouses, and industries reached by, and (or)

connecting with the tracks of These Railroads, as specified in this Tariff, will be performed only at the option and convenience of These Railroads.

Rule 3—Minimum Weights.—(a) Switching service will be performed only on carload traffic, and trap and station order cars as described below:

(b) The term "carload traffic" as used herein is understood to mean traffic tendered on one bill of lading from one consignor to one consignee and destination on the same date, for which rates are provided in tariffs and classifications lawfully on file with the Interstate Commerce Commission as to interstate traffic, or the several State Commissions as to intra-state traffic, when tendered in quantities of not less than 10,000 pounds, provided that when such tariffs or classifications provide a carload minimum of less than 10,000 pounds, such minimum will apply, provided further, that no minimum weight will be required on cotton handled into or out of compresses or on articles requiring special facilities for loading and unloading where such facilities are not provided.

(c) A trap car is a car loaded with one or more less carload shipments, aggregating 10,000 pounds or more, at points on private or assigned siding for distribution at the railway's warehouse into regular package or other cars for forwarding.

(d) A station order car is a car loaded in station order with miscellaneous less carload shipments aggregating 10,000 pounds or more. A station order car differs from a trap car in that the purpose of the station order car is to permit its being put into trains without rehandling contents at railway's freight warehouse.

(e) No switching service will be performed on any inbound less than carload shipment weighing less than 10,000 pounds.

(f) This rule does not apply at Louisville, Henderson, Paducah, Ky., Memphis, Tenn., Birmingham, Ala., and points in Birmingham Group (see pages 116 to 139, inclusive).

Rule 4—Cars subject to demurrage.—All cars switched from and to switches, tracks, warehouses, and industries covered by this Tariff will be subject to the established demurrage rates, rules, and regulations published in Tariff 13823-D, Agent Jones' I. C. C. No. 1340, supplements thereto or reissues thereof, in force at point at which cars are handled.

Rule 5—Absorption of Switching Charges.—(a) At points indexed on pages A-4 to A-13, inclusive, These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, except as otherwise provided herein, provided such cars contain freight traffic (except Cement from Kosmosdale, Ky., see Rule 6; except Coal and Coke, see Rule 7; except Benzine, Gasoline, Naphtha, and Gas Oil, carload, to Central City, Elizabethtown, Gracey, Morganfield, Nortonville, and Providence, Ky., see Rule 8,[1] except Gravel and Sand from Golden, Miss., see Rule 26, and except Logs, Bolts, Billets, etc., see Paragraph

[1] Reduction.

e) from or destined to competitive points (see Rule 10), which pays These Railroads a freight rate or charge other than a switching rate or charge; also on Stone from Cedar Bluff, Ky., to Greenville, Miss. On freight traffic from or to competitive points, which pays These Railroads a switching rate or charge only and on freight traffic from or to non-competitive points, except as otherwise provided in this Rule and Rules 6, 7, and 26. These Railroads will not absorb the switching charges of other railroads.

(b) These Railroads will not absorb the switching charges of connecting or switching railroads performing the switching service on freight traffic from or to competitive points when other railroads do not compete for the traffic is question, EXCEPT as provided in Rules 6, 7, 8, and 26.

(c) These Railroads will not absorb the switching charges from or to switches, tracks, warehouses or industries reached by, and (or) connecting with the tracks of other connecting or switching railroads on shipments of material for the Illinois Central Railroad Co. or The Yazoo and Mississippi Valley Railroad Co.

(d) This rule will not apply on Hard Coal, Soft Coal, or Coke, see Rule 7.

(e) These Railroads will not absorb any switching charges on Logs, Bolts, Handle, Pole, Shaft, Spoke, Single or Double Tree Billets, or Hoop Poles, when from stations on These Railroads or when from stations on connecting lines, when the reshipping rates shown in Tariffs 602-I, I. C. C. No. 6405, 590-N, I. C. C. No. 6567, 692-F, I. C. C. No. 6447, supplements thereto or reissues thereof, are applied.

Issued April 18, 1924. Effective May 26, 1924. Issued by Joseph Hattendorf, General Freight Agent.

1040 Ninth revised page 1. Cancels eighth revised page 1. Tariff No. 2-B, I. C. C. No. 6700.

General Rates, Rules, and Regulations Governing Switching of Cars

(Applicable at stations on Illinois Central R. R. Co. (Southern Lines) and The Yazoo and Mississippi Valley Railroad Company, indexed on pages A-4 to A-13, inclusive, except as otherwise specifically provided herein.)

Note.—Any exception which may be made to these rates, rules, and regulations will be clearly stated under proper specific heading.

Rule 1—Application of Rates.—The rates contained in this tariff apply on carloads only, unless specified to the contrary herein, and cover the movement of a loaded car to switches, tracks, warehouses, and industries shown herein, and the movement of the empty car from such switches, tracks, warehouses or industries; or the placing of an empty car at switches, tracks, warehouses, and industries shown herein and the movement of the loaded car from such switches, tracks, warehouses, and industries, unless specified to the contrary

herein. If an empty car is ordered for loading, and the service of switching or placing it has been performed, and the car is not loaded, a switching charge of $2.25 per car will be assessed against the person, firm, or corporation ordering such car. (File 29776.)

Rule 2—Switching Service at Option of These Railroads.—Switching service for other railroad companies, in the movement of traffic to and from points on, and (or) reached by These Railroads, from and to switches, tracks, warehouses, and industries reached by, and (or) connecting with the tracks of These Railroads, as specified in this Tariff, will be performed only at the option and convenience of These Railroads.

Rule 3—Minimum Weights.—(a) Switching service will be performed only on carload traffic, and trap and station order cars as described below:

(b) The term "carload traffic" as used herein is understood to mean traffic tendered on one bill of lading from one consignor to one consignee and destination on the same date, for which rates are provided in tariffs and classifications lawfully on file with the Interstate Commerce Commission as to interstate traffic, or the several State Commissions as to intra-state traffic, when tendered in quantities of not less than 6,000 pounds, provided that when such tariffs or classifications provide a carload minimum of less than 6,000 pounds, such minimum will apply, provided further, that no minimum weight will be required on cotton handled into or out of compresses or on articles requiring special facilities for loading and unloading where such facilities are not provided.

(c) A trap car is a car loaded with one or more less carload shipments, aggregating 6,000 pounds or more, at points on private or assigned siding for distribution at the railway's warehouse into regular package or other cars for forwarding.

(d) A station order car is a car loaded in station order with miscellaneous less carload shipments aggregating 6,000 pounds or more. A station order car differs from a trap car in that the purpose of the station order car is to permit its being put into trains without rehandling contents at railway's freight warehouse.

(e) No switching service will be performed on any inbound less than carload shipment weighing less than 6,000 pounds.

(f) This rule does not apply at Louisville, Henderson, Paducah, Ky., Memphis, Tenn., Birmingham, Ala., and points in Birmingham Group (see pages 116 to 139, inclusive).

Rule 4—Cars Subject to Demurrage.—All cars switched from and to switches, tracks, warehouses, and industries covered by this Tariff will be subject to the established demurrage rates, rules, and regulations published in Tariff 13823-J, Agent Jones' I. C. C. No. 2150, supplements thereto or successive issues thereof, in force at point at which cars are handled.

Rule 5—Absorption of Switching Charges.—(a) At points indexed on pages A-4 to A-13, inclusive. These Railroads will absorb

the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, except as otherwise provided herein, provided such cars contain freight traffic (except cement from Kosmosdale, Ky., see Rule 6; except coal and coke, see Rule 7; except benzine, gasoline, naphtha and gas oil, carload, to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky., see Rule 8; except gravel and sand from Golden, Miss., see Rule 26, and except logs, bolts, billets, etc., see paragraph (e) from or destined to competitive points (see Rule 10), which pays These Railroads a freight rate or charge other than a switching rate or charge; also on stone from Cedar Bluff, Ky., to Greenville, Miss. On freight traffic from or to noncompetitive points, which pays These Railroads a switching rate or charge only, and on freight traffic from or to noncompetitive points, except as otherwise provided in this Rule and Rules 6, 7, and 26, These Railroads will not absorb the switching charges of other railroads.

(b) These Railroads will not absorb the switching charges of connecting or switching railroads performing the switching service on freight traffic from or to competitive points when other railroads do not compete for the traffic in question, Except as provided in Rules 6, 7, 8, and 26.

(c) These Railroads will not absorb the switching charges from or to switches, tracks, warehouses, or industries reached by, and (or) connecting with the tracks of other connecting or switching railroads on shipments of material for the Illinois Central Railroad Co., or The Yazoo and Mississippi Valley Railroad Co.

(d) This rule will not apply on hard coal, soft coal, or coke. See Rule 7.

(e) These Railroads will not absorb any switching charges on billets, viz.: handle, pole, shaft, single and double tree, or spoke; bolts; flitches; hoop poles; logs; lumber, rough; rough sawed heading; or rough staves, when from stations on These Railroads or when from stations on connecting lines, when the reshipping rates shown in Tariffs 602–M, I. C. C. No. 7810, 590–R, I. C. C. No. 7786, 692–H, I. C. C. No. 7313, 816–B, I. C. C. No. 7798, 790–A, I. C. C. No. 7193, 824–A,[1] I. C. C. No. 7408, and 818–A, I. C. C. No. 7391, supplements thereto or successive issues thereof, are applied, except as otherwise specifically provided.

(f) On cotton or cotton linters destined to and arriving at New Orleans, La., via These Railroads except where rates paid include delivery to shipside, These Railroads will not perform or absorb switching, except as provided on page 185–A.

Issued September 16, 1932. Effective October 25, 1932. Issued by J. L. Sheppard, General Freight Agent, 135 East Eleventh Place, Chicago, Ill.

1041 Original Page 2. Tariff No. 2–B, I. C. C. No. 6700.

[1] Reduction.

Rule 6—Absorption of switching charges on cement from Kosmosdale, Ky.—At competitive points indexed on pages A–4 to A–13 inclusive, these railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, but not in excess of $11.50 per car, on Cement from Kosmosdale, Ky.

Rule 7—Absorption of switching charges on coal and coke.—On hard coal, soft coal or coke, These Railroads will, except as otherwise specifically provided in this tariff, absorb switching charges of other connecting railroads lawfully on file with the Interstate Commerce Commission at competitive points as defined in Rule 10, but not in excess of $3.60 per car. If switching charges of connecting railroads exceed $3.60 per car, such excess will be in addition to the rate of freight.

Rule 8—Absorption of Switching Charges on Benzine, Gasoline, Naphtha, and Gas Oil, Carloads to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky.—These Railroads will absorb the switching charges of other connecting or switching railroads (at point of origin or destination), lawfully on file with the Interstate Commerce Commission, but not exceeding $11.50 per car, on Benzine, Gasoline, Naphtha, and Gas Oil, carloads, from competitive points (see Rule 10), to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky.

Rule 9—Non-Competitive Points.—The term "non-competitive points," as used in this tariff, will be understood to mean:

(a) Points reached only by the rails of the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co., except as provided in Rule 10 (b).

(b) Points reached by the rails of railroads having track connection with the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co. only.

Rule 10—Competitive Points.—(a) The term "competitive points," as used in this tariff, will be understood to mean all points not included in the foregoing description of "non-competitive points."

(b) Coal mines on Illinois Central R. R. Co. will be considered competitive points on coal and coke traffic.

(c) The competitive points, or junction points of I. C. R. R. Co. and The Y. and M. V. R. R. Co. with other Railroads are indicated by (*) in alphabetical list of stations shown on pages A–4 to A–13 inclusive.

Rule 11—Switching Charges on Traffic Forwarded or Received via These Railroads.—No switching charge will be assessed by These Railroads for switching service performed by them at destination on carload freight arriving via These Railroads and delivered direct to switches, tracks, warehouses, or industries reached by, and (or) connecting with the tracks of These Railroads, or upon carload freight at points of origin received direct from switches, tracks, warehouses,

or industries reached by, and (or) connecting with the tracks of These Railroads and forwarded by These Railroads.

Rule 12—Additional Switch Movements After Cars Are Placed.—(a) (Will not apply at New Orleans, La.) When upon the request of the shippers or consignees, cars arriving at destination, via These Railroads are placed upon switches, tracks, or at warehouses or industries reached by, and (or) connecting with the tracks of These Railroads, or when such cars are placed upon the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to consignee so far as concerns the duty of These Railroads. Any subsequent switch movement or switching service will be subject to the rates, rules, and regulations contained in this tariff applicable on Intra-Plant (see Note), Intra-Terminal (see Note) or Inter-Terminal (see Note) switching and charged accordingly, except that when no part of the shipment has been unloaded, nor additional freight placed in the car, charges shown on pages 170 and 171 will apply.

(b) (Applicable only at New Orleans, La.) When upon request of the shippers or consignees, cars arriving at destination, except as provided in paragraph (c), via These Railroads are placed upon switches, tracks, or at warehouses or industries reached by, and (or) connecting with the tracks of These Railroads, or when such cars are placed upon the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to consignee so far as concerns the duty of These Railroads. Any subsequent switch movement or switching service will be subject to the rates, rules, and regulations contained in this tariff and charged accordingly, except that when no part of the shipment has been unloaded, nor additional freight placed in the car, car rental will not be assessed, but where any part of the shipment has been unloaded, or additional freight has been placed in the car, and request is then made for the car to be moved, $5.50 per car for Car Rental shall also be assessed (except as provided in paragraph (b) Rule 15.)

Note—Intra-Plant Switching—A switch movement from one track to another track within the same plant or industry.

Intra-Terminal Switching—A switch movement (other than Intra-plant switching) from one track to another of the same road within the limits of one station or industrial switching district.

Inter-Terminal Switching—A switch movement from a track of one road to a track of another road where both tracks are within the switching limits of the same station or industrial switching district.

Issued September 29, 1923. Effective November 6, 1923. Issued by Joseph Hattendorf, General Freight Agent.

1042 Third revised page 2. Cancels second revised page 2. Tariff No. 2-B, I. C. C. No. 6700.

Rule 6—Absorption of Switching Charges on Cement From Kosmosdale, Ky.—At competitive points indexed on pages A-4 to A-13, inclusive, These Railroads will absorb the switching charges of other

connecting or switching railroads lawfully on file with the Interstate Commerce Commission, but not in excess of $11.50 per car, on Cement from Kosmosdale, Ky.

Rule 7—Absorption of Switching Charges on Coal and Coke.—(a) On hard coal, soft coal, or coke, These Railroads will, except as otherwise specifically provided in this tariff (See Also Paragraph (b), absorb switching charges of other connecting railroads lawfully on file with the Interstate Commerce Commission at competitive points as defined in Rule 10, but not in excess of $3.60 per car. If switching charges of connecting railroads exceed $3.60 per car, such excess will be in addition to the rate of freight.

(b) On shipments of hard coal, soft coal, or coke, consigned to the Brookhaven Pressed Brick Co., Brookhaven, Miss., These Railroads will absorb switching charges of other connecting Railroads lawfully on file with the Interstate Commerce Commission of not to exceed $5.00 per car.

Rule 8—Absorption of Switching Charges on Benzine, Gasoline, Naphtha, and Gas Oil, Carloads to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville and Providence Ky.—These Railroads will absorb the switching charges of other connecting or switching railroads (at point of origin or destination), lawfully on file with the Interstate Commerce Commission, but not exceeding $11.50 per car, on Benzine, Gasoline, Naphtha, and Gas Oil, carloads, from competitive points (see Rule 10, to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville, and Providence, Ky.

Rule 9—Non-Competitive Points.—The term "non-competitive points," as used in this tariff, will be understood to mean:

(a) Points reached only by the rails of the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co., except as provided in Rule 10 (b).

(b) Points reached by the rails of railroads having track connection with the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co., only.

Rule 10—Competitive Points.—

(a) The term "competitive points," as used in this tariff, will be understood to mean all points not included in the foregoing description of "non-competitive points."

(b) Coal mines on Illinois Central R. R. Co. will be considered competitive points on coal and coke traffic.

Stations [1] on Vicksburg Route Division of the Y. and M. V. R. R. Co. between Meridian, Miss., and Lorraine, La.-Tex., will also be considered competitive points. (File 127776.)

(c) The competitive points, or junction joints of I. C. R. R. Co. and The Y. and M. V. R. R. Co. (except points on the Vicksburg Route Division) with other Railroads are indicated by (*) in alphabetical list of stations shown on pages A-4 to A-13, inclusive.

Rule 11—Switching Charges on Traffic Forwarded or Received via These Railroads.—No switching charge will be assessed by These

Railroads for switching service performed by them at destination on carload freight arriving via These Railroads and delivered direct to switches, tracks, warehouses, or industries reached by, and (or) connecting with the tracks of These Railroads, or upon carload freight at points of origin received direct from switches, tracks, warehouses, or industries reached by, and (or) connecting with the tracks of These Railroads and forwarded by These Railroads.

Rule 12—Additional Switch Movements After Cars Are Placed.—(a) (Will not apply at New Orleans, La.). When upon the request of the shippers or consignees, cars arriving at destination via These Railroads are placed upon switches, tracks, or at warehouses or industries reached by, and (or) connecting with the tracks of These Railroads, or when such cars are placed upon the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to consignee so far as concerns the duty of These Railroads. Any subsequent switch movement or switching service will be subject to the rates, rules, and regulations contained in this tariff applicable on Intra-Plant (see Note), Intra-Terminal (see Note), or Inter-Terminal (see Note) switching and charged accordingly, except that when no part of the shipment has been unloaded, nor additional freight placed in the car, charges shown on pages 170 and 171 will apply.

(b) (Applicable only at New Orleans, La.) When upon request of the shippers or consignees, cars arriving at destination, except as provided in paragraph (c), via These Railroads are placed upon switches, tracks, or at warehouses or industries reached by, and (or) connecting with the tracks of These Railroads, or when such cars are placed upon the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to consignee so far as concerns the duty of These Railroads. Any subsequent switch movement or switching service will be subject to the rates, rules, and regulations contained in this tariff and charged accordingly, except that when no part of the shipment has been unloaded, nor additional freight placed in the car, car rental will not be assessed, but where any part of the shipment has been unloaded, or additional freight has been placed in the car, and request is then made for the car to be moved, $5.50 per car for Car Rental shall also be assessed (except as provided in paragraph (b) Rule 15).

Note—Intra-Plant Switching.—A switch movement from one track to another track within the same plant or industry.

Intra-Terminal Switching.—A switch movement (other than Intra-plant switching) from one track to another of the same road within the limits of one station or industrial switching district.

Inter-Terminal Switching.—A switch movement from a track of one road to a track of another road where both tracks are within the switching limits of the same station or industrial switching district.

Issued July 17, 1926. Effective August 22, 1926. Issued by J. L. Sheppard, General Freight Agent.

1043 Ninth revised page 2. Cancels eighth revised page 2. Tariff No. 2-B, I. C. C. No. 6700.

Rule 6—Absorption of Switching Charges on Cement From Kosmosdale, Ky.—At competitive points indexed on pages A–4 to A–13 inclusive, These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, but not in excess of $11.50 per car, on Cement from Kosmosdale, Ky.

Rule 6½—Absorption of Switching Charges on Road Building Material or Paving Composition From Kosmosdale, Ky.—At competitive points indexed on pages A–4 to A–13, inclusive, These Railroads will absorb the switching charges of other connecting or switching railroads lawfully on file with the Interstate Commerce Commission, but not in excess of $2.70 per car, on Road Building Material or Paving Composition from Kosmosdale, Ky.

Rule 7—Absorption of Switching Charges on Coal and Coke.—(a) On hard coal, soft coal or coke, These Railroads will, except as otherwise specifically provided in this tariff (See Also Paragraph (b)) absorb switching charges of other connecting railroads lawfully on file with the Interstate Commerce Commission at competitive points as defined in Rule 10, but not in excess of $3.60 per car. If switching charges of connecting railroads exceed $3.60 per car, such excess will be in addition to the rate of freight.

(b) On shipments of hard coal, soft coal or coke, consigned to the Brookhaven Pressed Brick Co., Brookhaven, Miss., These Railroads will absorb switching charges of other connecting Railroads lawfully on file with the Interstate Commerce Commission of not to exceed $5.00 per car.

Rule 8—Absorption of Switching Charges on Benzine, Gasoline, Naphtha, and Gas Oil, Carloads to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville and Providence, Ky.—These Railroads will absorb the switching charges of other connecting or switching railroads (at point of origin or destination), lawfully on file with the Interstate Commerce Commission, but not exceeding $11.50 per car, on Benzine, Gasoline, Naphtha and Gas Oil, carloads, from competitive points (see Rule 10), to Central City, Elizabethtown, Gracey, Hopkinsville, Morganfield, Nortonville and Providence, Ky.

Rule 9—Non-competitive Points.—The term non-competitive points, as used in this tariff, will be understood to mean:

(a) Points reached only by the rails of the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co., except as provided in Rule 10 (b).

(b) Points reached by the rails of railroads having track connection with the Illinois Central R. R. Co. (Southern Lines) and (or) The Yazoo and Mississippi Valley R. R. Co., only.

(c) Stations on the New Orleans Great Northern Railroad Company (applicable only on traffic originating at or destined to New Orleans, La., Algiers, La., Amesville, La. (Marrero, La.), Distillery Spur No. 1

and 2, La., Gouldsboro, La., Gretna, La., Harvey, La., Westwego, La., Westwego Elevators, La., and Westwego Wharf, La.).

(d) Stations on the New Orleans & Northeastern Railroad Company (applicable only on traffic originating at or destined to New Orleans, La., Algiers, La., Amesville, La. (Marrero, La.), Distillery Spur No. 1 and 2, La., Gouldsboro, La., Gretna, La., Harvey, La., Westwego, La., Westwego Elevators, La., and Westwego Wharf, La.).

(e)[1] Stations on the L. & A. Railway located east of the Mississippi River viz: Stations Angola, La., to Kenner, La., inclusive (applicable only on traffic originating at or destined to New Orleans, La., Algiers, La., Amesville, La., Marrero, La., Distillery Spur Nos. 1 and 2, La., Gouldsboro, La., Gretna, La., Harvey, La., Westwego, La., Westwego Elevators, La., and Westwego Wharf, La.)

Rule 10—Competitive Points.—(a) The term "competitive points," as used in this tariff, will be understood to mean all points not included in the foregoing description of "non-competitive points."

(b) Coal mines on Illinois Central R. R. Co. will be considered competitive points on coal and coke traffic.

Stations on Vicksburg Route Division of The Y. and M. V. R. R. Co. between Meridian, Miss., and Lorraine, La.-Tex., will also be considered competitive points.

(c) The competitive points, or junction points of I. C. R. R. Co. and The Y. and M. V. R. R. Co. (except points on the Vicksburg Route Division) with other Railroads are indicated by (*) in alphabetical list of stations shown on pages A–4 to A–13 inclusive.

Rule 11—Switching Charges on Traffic Forwarded or Received Via These Railroads.—No switching charge will be assessed by These Railroads for switching service performed by them at destination on carload freight arriving via These Railroads and delivered direct to switches, tracks, warehouses or industries reached by, and (or) connecting with the tracks of These Railroads, or upon carload freight at points of origin received direct from switches, tracks, warehouses or industries reached by, and (or) connecting with the tracks of These Railroads and forwarded by These Railroads.

Rule 12—Additional Switch Movements After Cars Are Placed.—(a) (Will not apply at New Orleans, La.). When upon the request of the shippers or consignees, cars arriving at destination, via These Railroads, are placed upon switches, tracks or at warehouses or industries reached by, and (or) connecting with the tracks of These Railroads, or when such cars are placed upon the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to consignee so far as concerns the duty of These Railroads. Any subsequent switch movement or switching service will be subject to the rates, rules and regulations contained in this tariff applicable on Intra-Plant (see Note), Intra-Terminal (see Note) or Inter-Terminal (see Note) switching and charged accordingly, except that when no part of the shipment

[1] Reduction.

has been unloaded, nor additional freight placed in the car, charges shown on pages 170 and 171 will apply.

(b) (Applicable only at New Orleans, La.) When upon request of the shippers or consignees, cars arriving at destination, except as provided in paragraph (c), via These Railroads are placed upon switches, tracks, or at warehouses or industries reached by, and (or) connecting with the tracks of These Railroads, or when such cars are placed upon the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to consignee so far as concerns the duty of These Railroads. Any subsequent switch movement or switching service will be subject to the rates, rules and regulations contained in this tariff and charged accordingly, except that when no part of the shipment has been unloaded, nor additional freight placed in the car, car rental will not be assessed, but where any part of the shipment has been unloaded, or additional freight has been placed in the car, and request is then made for the car to be moved, $5.50 per car for Car Rental shall also be assessed (except as provided in paragraph (b) Rule 15).

Note—Intra-Plant Switching.—A switch movement from one track to another track within the same plant or industry.

Intra-Terminal Switching—A switch movement (other than Intra-plant switching) from one track to another of the same road within the limits of one station or industrial switching district.

Inter-Terminal Switching—A switch movement from a track of one road to a track of another road where both tracks are within the switching limits of the same station or industrial switching district.

Issued September 8, 1933. Effective October 10, 1933. Issued by J. L. Sheppard, General Freight Agent, 135 East Eleventh Place, Chicago, Ill.

1044 Added page 171–A, Tariff No. 2–B, I. C. C. No. 6700.

Terminal allowances[1] to the Standard Oil Company of Louisiana at North Baton Rouge, La.

On traffic to and from points on or reached via The Yazoo and Mississippi Valley Railroad Company or connections.

On all carload shipments (including trap cars containing 10,000 pounds or more of less-carload freight) destined to or coming from the plant of the Standard Oil Company of Louisiana at North Baton Rouge, La., the terminal switching service is performed by the Standard Oil Company of Louisiana for account of The Yazoo and Mississippi Valley Railroad Company. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for The Yazoo and Mississippi Valley Railroad Company by the Standard Oil Company of

[1] Reduction.

Louisiana at North Baton Rouge, La., the Standard Oil Company of Louisiana, will be allowed $1.20 per loaded car, which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operations of the plant facility made during period, March 11, 1927 to March 17, 1927, inclusive, and filed with the Interstate Commerce Commission.

Issued July 1, 1927. Effective August 6, 1927. Issued by J. L. Sheppard, General Freight Agent.

1045 First revised page 171–A. Cancels added page 171–A. Tariff No. 2–B, I. C. C. No. 6700.

Terminal allowances to the Standard Oil Company of Louisiana at North Baton Rouge, La.

Cancel.[2] Allowance Discontinued.

Issued June 12, 1935. Effective July 15, 1935.

Issued in compliance with order of the Interstate Commerce Commission in Ex Parte No. 104, fifth supplemental report, of May 14, 1935. Issued by R. A. Trovillion, General Freight Agent, 135 East Eleventh Place, Chicago, Ill.

1046 Second revised page 171–A. Tariff No. 2–B, I. C. C. No. 6700. Cancels first revised page 171–A.

Terminal allowances to the Standard Oil Company of Louisiana at North Baton Rouge, La.

The cancellation of Terminal Allowance of $1.20 per car to the Standard Oil Company of Louisiana scheduled to become effective July 15, 1935, as provided in First Revised Page 171–A of Illinois Central Railroad Company and The Yazoo and Mississippi Valley Railroad Company Tariff No. 2–B, I. C. C. No. 6700, is hereby cancelled and withdrawn in compliance with order of the United States District Court of the Eastern District of Louisiana at Baton Rouge, La., in Equity No. 331, dated July 12, 1935.

The provisions of Added Page 171–A of Illinois Central Railroad and The Yazoo and Mississippi Valley Railroad Tariff No. 2–B, I. C. C. No. 6700, continue in effect pending further amendment of this tariff. Issued July 13, 1935. Effective July 15, 1935. Issued by R. A. Trovillion, General Freight Agent, 135 East Eleventh Place, Chicago, Ill.

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[2] Increase.

Fourteenth Revised Page 172 Cancels Thirteenth Revised Page 172, tariff No. 2–B, I. C. C. No. 6700.
Rates, Rules, and Regulations Governing Switching of Cars and Absorption of Switching at Points Shown Below,
Subject to General Rules shown on Pages 1 to 4, inc., except as provided below.

44000—38—47

Stations	Between (Except as otherwise provided)	and	I. C. R. R. and The Y. & M. V. R. R., Switching Charge per car. (Except as Noted.) Rates do not include car rental except where specified below				
			For Switching Charges applicable on Intra-Terminal and Intra-Plant. (See Note 6 below)				Amount and extent to which switching charges will be absorbed per car (except as noted)
			Applies only on traffic from and to points beyond switching district, of points shown below	Applies only on Intra-terminal switching. (See Note 6 below)	Applies only on Inter-terminal switching. (See Note 6 below) on traffic delivered to connecting roads	Applies only on Inter-terminal switching. (See Note 6 below) on traffic received from connecting roads	
Ackerman, Miss.	Industries and Side Tracks on I. C. R. R.	Connection with G. M. & N. R. R.	$2.25		[1] $7.20	[2] $2.70	
	Industries on Side Tracks on G. M. & N. R. R.	Connection with I. C. R. R.					$2.25
Alligator, Miss.	Switches, tracks, or warehouses located on or connecting with tracks of the Y. and M. V. R. R. Co. at Alligator, Miss.	Switches, tracks or warehouses located in or at Alligator, Miss.	For weighing charge to apply refer to Eighteenth Revised Page 187.				

[1] The minimum charge for the entire through switching service will be $6.30 per car.

[2] Includes car rental.

Stations	Between (Except as otherwise provided)	and	I. C. R. R. and The Y. & M. V. R. R., Switching Charge per car. (Except as Noted.) Rates do not include car rental except where specified below				
			For Switching Charges applicable on Intra-Terminal and Intra-Plant. (See Note 6 below)				Amount and extent to which switching charges will be absorbed per car (except as noted)
			Applies only on traffic from and to points beyond switching district, of points shown below	Applies only on Intra-terminal switching. (See Note 6 below)	Applies only on Inter-terminal switching. (See Note 6 below) on traffic delivered to connecting roads	Applies only on Inter-terminal switching. (See Note 6 below) on traffic received from connecting roads	
Baton Rouge, La	Baton Rouge, La	North Baton Rouge, La	(See Note 1 below)				
	The Y. and M. V. R. R. incline	Freight and Passenger Depots of the Y. and M. V. R. R. at Baton Rouge, La.; also switches, tracks, warehouses and industries in Baton Rouge and North Baton Rouge, La., reached by and/or connecting with the tracks of The Y. and M. V. R. R. extending from Monticeno Bayou on the north to and including the Baton Rouge Rice Mill on the south, also east on the Hammond District to and including Gibbons Spur, La.	(Cancel, see Note 2 below)				
			(Cancel, see Note 3 below)				
	From the Y. and M. V. R. R. depot at Baton Rouge, La.	To Standard Oil Co. or Union Tank Car Company, North Baton Rouge, La.	(See note 4 below)				

The Y. and M. V. R. R. incline... Interchange between the N. O. T. & M. R. R. (Gulf Coast Lines) and The Y. and M. V. R. R. is at this incline. Interchange between the T. & N. O. R. R. (Southern Pacific Lines) and The Y. and M. V. R. R. is at this incline.	Freight and Passenger Depots of the Y. and M. V. R. R. at Baton Rouge, La.; also switches, tracks, warehouses and industries in Baton Rouge and North Baton Rouge, La., reached by and/or connecting with the tracks of The Y. and M. V. R. R. within the following limits: from Monticeno Bayou on the north to and including the Baton Rouge Rice Mill on the south, also east on the Hammond District to and including Gibbons Spur, La.	Use by N. O. T. & M. R. R. (Gulf Coast Lines) and T. & N. O. R. R. (Southern Pacific Lines) of The Y. and M. V. R. R. facilities. (See Note 5 below.)

NOTE 1.—North Baton Rouge, La., will be considered as within the switching limits of Baton Rouge, La., and in the absence of specific commodity rates to or from North Baton Rouge, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from North Baton Rouge, La. (Applies on carloads and less than carloads.)

NOTE 2.—Cancel. See provisions of this tariff.

NOTE 3.—Cancel. See provisions of this tariff.

NOTE 4.—L. C. L. Shipments, without regard to quantity or minimum, consigned to or in care of Standard Oil Company of Louisiana and (or) Union Tank Car Company, arriving at Baton Rouge, La., via the Y. and M. V. R. R. will be loaded in cars and switched to the Standard Oil Company and (or) Union Tank Car Company, North Baton Rouge, La.

NOTE 5.—By contracts between The Y. and M. V. R. R. and, respectively, the N. O. T. & M. R. R. and the T. & N. O. R. R., the facilities of The Y. and M. V. R. R. at Baton Rouge, La., and North Baton Rouge, La., are available to the other railroads named for the handling of all classes of traffic. The point of interchange between the companies named is at The Y. and M. V. Railroad's Incline, on the east bank of the Mississippi River and by the terms of the respective contracts The Y. and M. V. R. R. performs all the services required in the handling of the business of the other companies.

NOTE 6.—Intra-Terminal Switching.—A switch movement (other than Intra-plant) switching from one track to another of the same road within the limits of one station or industrial switching district.

Inter-Terminal Switching.—A switch movement from a track of one road to a track of another road where both tracks are within the switching limits of the same station or industrial switching district. (No change in this page.) Issued September 14, 1929. Effective October 20, 1929. Issued by J. L. Sheppard, General Freight Agent, I. C. R. R.-The Y. and M. V. R. R., Grand Central Station, Memphis, Tenn.

1048 Only two supplements to this tariff will be in effect at any time. File 2675. I. C. C. No. A. 578 cancels tariffs as shown on page No. 4.

LOUISIANA RAILWAY & NAVIGATION CO.

Terminal Charges Tariff No. 1400–A Cancels Tariffs as Shown on Page No. 4 Containing Rates, Rules, and Regulations Governing Switching, Drayage, Handling, and Transfer Charges; also Absorptions, Custom House Brokerage Fees, Dunnage Charges, Handling Charges on Import and Export Freight, Handling of Empty, Tank, Horse, Poultry, and Cattle Car Equipment, Icing Instructions, Live Stock Feed Charges, Mileage on Private Car Equipment, Minimum Carload Weight on New, Rebuilt, or Defective Cars, Order Notify Shipments, Overloading of Cars, Reconsignment, Diversion, Change of Consignee, Destination or Route, Refrigeration, Rental Charges on Private Car Equipment, Transit Privileges, Wharfage and Loading on Tropical Fruits, and Other Terminal Charges Applicable at All Stations on the Louisiana Railway & Navigation Co.

Governed as to prepay requirements at stations, and changes in station names by L. R. & N. Co. circular No. 182–H, I. C. C. No. A–548, supplements thereto and reissues thereof. All shipments handled under this tariff will be subject to established Demurrage and Storage Rules and Charges, published in L. R. & N. Co. Demurrage and Storage Tariff No. 1402–A, I. C. C. No. A–573. Issued September 6, 1913. Effective October 10, 1913. Issued by E. C. D. Marshall, General Freight Agent, Shreveport, La. Station Case No. 4.

1049 Item No. 10—Free Switching Delivery of Cars. (File 3559).—(a) The L. R. & N. Co. will place carload shipments arriving via its line, on team delivery tracks or to Firms, Industries, Switches or Warehouses reached by, and connecting with, the tracks of this line, free of switching charges. On carload shipments for forwarding to points on or via this line, from team delivery tracks, Firms, Industries or Warehouses reached by, and connecting with, the tracks of this line, no switching charge will be assessed.

(b) Upon request of the shippers or consignees carload shipments arriving at destination via the L. R. & N. Co. will be placed on team delivery tracks, or to Firms, Industries, Switches or Warehouses reached by, and connecting with, the tracks of this line, and such placement or delivery shall constitute delivery of freight to the consignee. When carload shipments are placed on the usual Interchange Track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to the consignee, so far as concerns the duty of this Company.

(c) On any subsequent switch movements on the L. R. & N. Co., the rules in this tariff will apply, and this road will assess a switching charge of $2.00 per car per movement. When no part of the shipment has been unloaded nor any additional freight placed in the car, car rental will not be assessed, but when any part of the shipment

has been unloaded or additional freight has been placed in the car, and request is then made for the car to be moved, $3.00 per car for car rental will be assessed in addition to the switching charge. (See paragraph "d").

(d) Except as otherwise provided, no car rental will be assessed by this Company on cars of private ownership, when such cars are furnished without expense to this line.

Item No. 11—Local (Inter-Yard) Switching.—The placing of either a loaded or empty car at an Industry, Warehouse or Side Track at one point within Yard Limits to be unloaded, or loaded and moved to another point within Yard Limits for unloading or loading on this line, and not destined to a point beyond, is strictly prohibited, except as provided in Items No. 10 and 146.

Item No. 12—Absorption of Switching Charges of Connecting Lines. (File 3389).—(a) On Carload Competitive Traffic (See Item No. 13), received or forwarded via this line for or from Firms, Industries, Switches and Warehouses located on tracks of connecting lines, the switching charges of connecting lines performing the service, as published and lawfully on file with the Interstate Commerce Commission, will be absorbed by this Company. This refers only to traffic which pays this Company a freight rate or charge other than a switching rate or charge.

(b) On Non-Competitive Carload Traffic (See Item No. 14), received or forwarded via this line for or from Firms, Industries, Switches and Warehouses located on tracks of connecting lines, the Switching Charges of connecting lines performing the service, as published and lawfully on file with the Interstate Commerce Commission, will not be absorbed by this Company, but will be in addition to the freight rate.

(c) Paragraphs (a) and (b) will not apply from or to Algiers, Amesville, Gouldsboro, Gretna, and Harvey, La. For rules governing and for basis for rates to and from those points, refer to Item No. 102.

(d) Paragraphs (a) and (b) will not apply to or from Company Canal, Southside, and Westwego, La. Switching charges of the M. L. & T. R. R. & S. S. Co. and T. & P. Ry. lawfully on file with the Interstate Commerce Commission, applicable to and from those points, will be in addition to the rates to and from New Orleans, La., on both competitive and non-competitive traffic, except where through rates are published to and from the points mentioned, in which event the switching charges of the above lines will be absorbed by the L. R. & N. Co.

(e) The L. R. & N. Co. will absorb, on carload shipments handled by this road to and from Interstate points and to and from Intrastate Competitive points, switching charges of The K. C. S. Ry., as published and lawfully on file with the Interstate Commerce Commission, between Shreveport and Cedar Grove, La. (File No. 56.)

(f) The L. R. & N. Co. will absorb, on less than carload shipments of 10,000 pounds or more, handled by this road to and from Interstate

points, and to and from Intrastate competitive points, switching charges not exceeding $3.50 per car, of The K. C. S. Ry. as published and lawfully on file with the Interstate Commerce Commission, between Shreveport and Cedar Grove, La. (File 56).

1050 Supplements to this tariff will be in effect at any time. File 2675. I. C. C. No. A-944. (Cancels I. C .C. No. A-887.)

LOUISIANA RAILWAY & NAVIGATION COMPANY

Terminal Charges Tariff No. 1400-F (Cancels Terminal Charges Tariff No. 1400-E) containing Rates, Rules, and Regulations governing Switching, Drayage, Handling and Transfer Charges also Absorptions, Customhouse Brokerage Fees, Dunnage Charges, Handling of Import and Export Freight, Minimum Carload Weight on New Rebuilt or Defective Cars, Order Notify Shipments, Overloading of Cars, Wharfage and Loading of Tropical Fruits, and Other Terminal Charges Applicable at all stations on the Louisiana Railway & Navigation Company.

Governed as to prepay requirements at stations and changes in station names by L. R. & N. Co. Cir. No. J., I. C. C. No. A-852, supplements thereto and reissues thereof. All shipments handled under this Tariff will be subject to established Demurrage and Storage Rules Charges published in L. R. & N. Co. Demurrage and Storage Tariffs lawfully on file with the Interstate Commerce Commission. Issued May 30, 1924. Effective July 29, 1924. (Except as noted in items nos. 185 and 215) J. N. Campbell, General Freight Agent, Shreveport, La. Issued by C. H. Atherton, Chief of Tariff Bureau, Shreveport, La..

1051 Item No. 275—Free switching delivery of cars (file 3559).—

(a) The L. R. & N. Co. will place carload shipments arriving via its line, on team delivery tracks or to firms, industries, switches or warehouses reached by and connecting with the tracks of this line, free of switching charges. On carload shipments for forwarding to points on or via this line, from team delivery tracks, firms, industries, or warehouses reached by and connecting with, the tracks of this line, no switching charge will be assessed.

(b) Upon request of the shippers or consignees, carload shipments arriving at destination via the L. R. & N. Co. will be placed on team delivery tracks, or to firms, industries, switches, or warehouses reached by, and connecting with, the tracks of this line, and such placement or delivery shall constitute delivery of freight to the consignee. When carload shipments are placed on the usual Interchange Track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to the consignee, so far as concerns the duty of this Company.

(c) On any subsequent switch movements on the L. R. & N. Co., the Rules in this Tariff will apply, and this road will, except as otherwise specifically provided, assess a switching charge of $3.15 per car movement. When no part of the shipment has been unloaded

nor any additional freight placed in the car, car rental will not be assessed, but when any part of the shipment has been unloaded or additional freight has been placed in the car, and request is then made for the car to be removed, $4.00 per car extra switching charge will be assessed in addition to the switching charge of $3.15. (See paragraph "d".)

(d) Except as otherwise provided, no extra switching charge will be assessed by this Company on cars of private ownership, when such cars are furnished without expense to this line.

Item No. 280—Extra switching charge (car rental) (file 3559).—(a) Unless otherwise specifically provided, where this Company furnishes an empty car to be loaded, an extra switching charge (car rental), of $4.00 per car will be made. This charge will not be made on shipments on which this Company receives freight revenue other than a switching charge.

(b) The extra switching charge, specified in paragraph (a), will not be assessed by this road where shippers or consignees whose goods are being handled, furnish their own cars, without expense to this Company.

Item No. 285—Absorption of switching charges of connecting lines (file 3389).—(a) On carload competitive traffic (see Item No. 25), except Cotton and Cotton Linters, as provided in Item No. 125 or reissues and except as otherwise provided in Paragraphs (b) to (m) of this Item, and in Item No. 335, received or forwarded via this line, for or from firms, industries, switches, and warehouses located on tracks of connecting lines, the switching charges of connecting lines performing the service, as published and lawfully on file with the Interstate Commerce Commission, or the Louisiana Public Service Commission, will be absorbed by this Company. This refers to traffic which pays this Company a freight rate or charge other than a switching rate or charge.

Exception.—This Company will not absorb connecting lines' switching charges at New Orleans, La., on Sand and Gravel, carloads, except on shipments destined to Baton Rouge, La., to which point connecting lines' switching not to exceed $6.30 per car will be absorbed.

(b) On non-competitive carload traffic (see Item No. 30), received or forwarded via this line for or from firms, industries, switches, and warehouses located on tracks of connecting lines, the switching charges of connecting lines performing the service, as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission will not be absorbed by this Company, but will be in addition to the freight rate.

(c) Paragraphs (a) and (b) will not apply from or to Algiers, Gouldsboro, Gretna, Harvey and Marrero, La. For rules governing and for basis to and from these points, refer to Item No. 340.

(d) Paragraphs (a) and (b) will apply to or from Company Canal, Southside, Westwego and Westwego Elevators, La., and switching charges of the N. O. P. B. R. R., M. L. & T. R. R. & S. S. Co., Mo. Pac. R. R., T. & P. Ry. and T.-M. T. Co., lawfully

on file with the Interstate Commerce Commission or the Louisiana Public Service Commission, applicable between New Orleans, La., and these points, will be absorbed by the L. R. & N. Co., on carload shipments handled by this road to and from interstate points, and to and from intrastate competitive points.

(e) The L. R. & N. Co. will absorb, on carload shipments handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges of the K. C. S. Ry. as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission, between Shreveport, La., and Cedar Grove, La.

(f) The L. R. & N. Co. will absorb, on less-than-carload shipments of 10,000 pounds or more, handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges, not exceeding $3.15 per car, of the K. C. S. Ry., as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission, between Shreveport, La., and Cedar Grove, La.

(g) The L. R. & N. Co. will absorb, on carload shipments handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges of the K. C. S. Ry., as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission between Shreveport, La., and Gas Center, La.

(h) The L. R. & N. Co. will absorb, on less-than-carload shipments of 10,000 pounds or more, handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges, not exceeding $3.15 per car, of the K. C. S. Ry., as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission, between Shreveport and Gas Center, La.

(i) The L. R. & N. Co. will absorb, on carload shipments handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges of the K. C. S. Ry., as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission, between Shreveport, La., and North Shreveport, La. (Formerly Sheehan, La.)

(j) The L. R. & N. Co. will absorb, on less-than-carload shipments of 10,000 pounds or more, handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges, not exceeding $3.15 per car, of the K. C. S. Ry., as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission, between Shreveport, La., and North Shreveport, La. (Formerly Sheehan, La.)

(k) The L. R. & N. Co. will absorb, on carload shipments handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges of connecting or intermediate lines as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission,

between Shreveport, La., and Caddo Downs, La., and between Shreveport, La., and Jewella, La.

(l) The L. R. & N. Co. will absorb, on less-than-carload shipments of 10,000 pounds or more handled by this road to and from interstate points, and to and from intrastate competitive points, switching charges, not exceeding $3.15 per car, of connecting or intermediate lines as published and lawfully on file with the Interstate Commerce Commission or the Louisiana Public Service Commission, between Shreveport, La., and Caddo Downs, La., and between Shreveport La., and Jewella, La.

(m) The L. R. & N. Co. will absorb, on carload shipments handled by this road to and from intrastate competitive points, switching charges of the T. & P. Ry., as published and lawfully on file with the Louisiana Public Service Commission, between Shreveport, La., and Ardis, La.

When not shown on this Page, Explanation of Reference Marks and Technical Terms will be found in Item No. 5, Page No. 4.

1052 Supplements to C. R. C. Nos. Shown on Pages Nos. 2 and 3.

Supplement to I. C. C. Nos. shown on pages Nos. 2 and 3. Supplement to Freight Tariffs shown herein.

Louisiana & Arkansas Railway Company

Supplements announcing adoption—effective May 8, 1929, the tariffs shown on pages Nos. 2 and 3 hereof, or as amended, become the tariffs of the Louisiana & Arkansas Railway Company, as per its Adoption Notice, Freight Tariff No. 3733, I. C. C. No. 1313. Issued May 14, 1929. Effective May 8, 1929. Issued under authority of Rule 9 (i) of Interstate Commerce Commission Tariff Circular No. 20. F. A. Key, Jr., General Freight Agent, Shreveport, La. J. N. Campbell, Ass't Gen'l Freight Agent, Shreveport, La. Issued by C. H. Atherton, Chief of Tariff Bureau, 207 Central Station, Shreveport, La. W. R. Henry, Ass't Gen'l Freight Agent, Shreveport, La. J. A. Williamson, Ass't Gen'l Freight Agent, Shreveport, La.

Supplement No. to—		Supplements that contain all changes from the original tariff that are effective on the date hereof		Louisiana & Arkansas Railway Company			
I. C. C. No.	Tariff No.	To I. C. C. No.	To Tariff No.	I. C. C. No.	C. R. C. No.	Tariff No. (except as noted)	Description
	31		1, B, 2, 12, 19, 28, 30, and 31.	(1)		Circ. 1-A	Classification exceptions.
4	4	1, 2, 3, and 4	1, 2, 3, and 4	A-1065		Circ. 181-AC	Tariff index.
1	2	1	1 and 2	A-1043		Circ. 182-M	List of stations and table of distances.
	1		1	(1)		442-B	Lumber.
2	2	1 and 2	1 and 2	A-1044		518-O	Lumber.
1	1	1	1	A-1048		524-O	Lumber.
	1		1	(1)		540-D	Cordwood, slabs, and lumber.
	1		1	(1)		558-D	Lumber, logs, and staves.
4	4	3 and 4	3 and 4	A-972		581-H	Lumber.
1	1	1	1	A-902		588-C	Lumber.
1	1	1	1	A-1037		591-L	Lumber, logs, staves, and ties.
7	10	6 and 7	7, 9, and 10	A-1019		627-E	Transit privileges on lumber.
15	17	12, 14, and 15	9, 14, 16, and 17	A-1050		1204-I	Commodities.
6	6	3, 5, and 6	3, 5, and 6	A-1031		1271-F	Cotton seed.
6	6	5 and 6	5 and 6	A-977		1280-E	Transit tariff applying on glucose, molasses, syrup, and sugar.
	1		1	(1)		1288-C	Commodities.
1	1	1	1	A-821		1302-F	Milk and cream.
9	9	8 and 9	8 and 9	A-981		1317-N	Cottonseed products.
	10		7, 9, and 10	(1)		1326-D	Commodities.
1	1	1	1	A-1046		1327-D	Commodities, viz: Cotton and stone.
1	1	1	1	A-943		1328-H	Sugar, import.
9	9	8 and 9	C, 8, and 9	A-963		1338-F	Commodities.
	1		1	(1)		1339-E	Sugar.
1	1	1	1	A-973		1341-G	Turpentine cups.
7	10	6 and 7	6, 9, and 10	A-1025		1342-N	Cotton and cotton linters.
7	7	6 and 7	6 and 7	A-822	6	1345-E	Cotton and cotton linters.
5	5	4 and 5	4 and 5	A-1053		1346-E	Cotton and cotton linters.
1	1	1	1	A-871		1355-B	Sugar.
	1		1	(1)		1356-B	Lumber.
	1		1	(1)		1358-A	Locomotives and tenders.
13	13	12 and 13	12 and 13	A-875		1359	Transit privileges on cotton and cotton linters.
1	1	1	1	A-898		1361-B	Caustic soda and soda ash.
4	4	3 and 4	3 and 4	A-911		1362-A	Transit privileges on grain and grain products.
5	5	4 and 5	4 and 5	A-1026		1365-D	Cotton, cotton linters, or regins.

	1		1	(1)		1366-A	Cordwood.
1	1	1	1	A-917		1369	Transit of unrefined lard.
1	1	1	1	A-997		1370-A	Concentration and storage of butter, eggs, and poultry.
	1		1	(1)		1372	Wall plaster.
13	13	12 and 13	12 and 13	A-985		1373-A	Rules and regulations governing transit privileges on cotton seed oil, etc.
1	1	1	1	A-928		1374-A	Rules and regulations governing concentration and storage of broom corn.
1	1	1	1	A-1057		1375-F	Rules and regulations governing storage in transit of iron and steel hoops.
	1		1	(1)		1376	Cotton seed for planting purposes.
1	1	1	1	A-947		1377	Transit privileges on flour.
1	1	1	1	A-962		1378-A	Petroleum coke.
1	1	1	1	A-951		1379	Transit privileges on rough staves and heading.
2	2	1 and 2	1 and 2	A-968		1381	Transit privileges on iron or steel articles.
1	1	1	1	A-990		1387	Fullers' earth.
5	5	4 and 5	4 and 5	A-1016		1388-B	Fertilizer material.
1	1	1	1	A 1058		1389-B	Transit of packing house products.
1	1	1	1	A-999		1390-A	Storage in transit of potatoes, etc.
	1		1	(1)		1391	Transit privileges on moss.
1	1	1	1	A-998		1392	Calcium chloride.
1	1	1	1	A-1020		1393-A	Lumber.
1	1	1	1	A-1010		1398	Transit privileges on rice.
30	31	29 and 30	30 and 31	A-944		1400-F	Terminal charges.
1	1	1	1	A-904		1406-B	Transit on hides and wool.

[1] Applies intrastate only.

1054 Ark. No. 24 (Cancels Ark. No. 21). I. C. C. No. 1347 (Cancels I. C. C. Nos. A–1027 (L. R. & N. Co. Series) and 1319).

LOUISIANA & ARKANSAS RAILWAY COMPANY

Local Terminal Tariff No. 1789–J (Cancels Tariffs Nos. 1418 (L. R. & N. Co. Series) and 1789–I) containing Rates, Rules, and Regulations governing Switching, Drayage, Handling, and Transfer Charges also Absorptions, Allowances, Custom House Brokerage Fees, Dunnage Charges, Grain Doors, Order Notify Shipments, Overloading of Cars, Tollage, Wharfage and Loading of Tropical Fruits, Weighing and Reweighing of Carload Freight, and Other Terminal Charges Applicable at Stations on the Louisiana & Arkansas Railway.

Issued except as otherwise provided herein under Louisiana Public Service Commission Authority No. 2892–R. Governed, except as otherwise provided herein, by the Western Classification No. 61, I. C. C. No. 19, supplements thereto or successive issues thereof, issued by R. C. Fyfe, Agent, and by Southwestern Lines' Classification Exceptions and Rules Circular No. 1–P, I. C. C. No. 2063, supplements thereto or successive issues thereof, issued by J. E. Johanson, Agent.

Governed by Official List of Open and Prepay Stations No. 44, Agent F. A. Leland's I. C. C. No. A–9, supplements thereto or successive issues thereof, as to prepay requirements, changes in names of stations, additions and abandonment of stations, billing instructions from or to points not on railroads, restrictions as to non-acceptance or non-delivery of freight, and changes in station facilities, except as otherwise shown herein. All shipments handled under this tariff will be subject to established Demurrage and Storage Rules and Charges published in Tariffs lawfully on file with the Interstate Commerce Commission. Issued August 1, 1930. Effective September 6, 1930. Authority No. 575. Tariff Case No. 55. Issued by F. A. Key, Jr., Traffic Manager, Shreveport, La. W. R. Henry, Ass't Gen'l Freight Agent, Shreveport, La. W. C. Clark, Ass't Traffic Manager, Shreveport, La. J. A. Williamson, Ass't Gen'l Freight Agent, Shreveport, La. C. H. Atherton, Chief of Tariff Bureau, 207 Central Station, Shreveport, La. S. S. Senne, Ass't Gen'l Freight Agent, St. Louis Mo.

1055 Explanation of Abbreviations, Symbols, and Technical Terms

Abbreviations

Abbreviation	Explanation
C. R. I. & P. Ry	The Chicago, Rock Island and Pacific Railway Company.
I. C. R. R	Illinois Central Railroad Company.
K. C. S. Ry	Kansas City Southern Railway Company, The.
L. & A. Ry	Louisiana & Arkansas Railway Company.
L. A. & T. Ry	Louisiana, Arkansas & Texas Railway Company.
L. & N. R. R	Louisville and Nashville Railroad Company.

Abbreviation	Explanation
L. & N. W. R. R.	Louisiana and North West Railroad Company, The.
La. Sou. Ry.	Louisiana Southern Railway Company.
Mo. P. R. R. or Mo. Pac. R. R.	Missouri Pacific Railroad Company.
N. O. & L. C. R. R.	New Orleans and Lower Coast Railroad Company.
N. O. T. & M. Ry.	New Orleans, Texas & Mexico Railway Company.
N. O. & N. E. R. R.	New Orleans and Northeastern Railroad Company.
N. O. G. N. R. R.	New Orleans Great Northern Railroad Company.
N. O. P. B. R. R.	New Orleans Public Belt Railroad Company.
N. O. T. Co.	New Orleans Terminal Company.
St. L.-S. F. Ry.	St. Louis-San Francisco Railway Company.
St. L. S. W. Ry.	St. Louis Southwestern Railway Company.
S. L. B. & S. Ry.	Sibley, Lake Bisteneau and Southern Railway Company, The.
T. & N. O. R. R.	Texas and New Orleans Railroad Company.
T. & P. Ry.	The Texas and Pacific Railway Company.
T. P.-M. P. T. R. R. of N. O.	Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.
T. & G. Ry.	Tremont & Gulf Railway Company.
The Y. & M. V. R. R.	The Yazoo and Mississippi Valley Railroad Company.
Ark.	Arkansas.
Cir.	Circular.
Co.	Company.
Etc.	et cetera.
Frt.	Freight.
I. e.	That is.
Incl.	Inclusive.
Inc.	Incorporated.
La.	Louisiana.
L. P. S. C.	Louisiana Public Service Commission.
No.	Number.
Nos.	Numbers.
R. R.	Railroad.
Ry.	Railway.
S. S.	Steamship.

Symbols

[1] Applies on Intrastate Traffic only.

[2] Denotes reduction.

[3] Denotes increase.

[4] Denotes changes in wording which result in neither increases nor reductions in charges.

Technical Terms

The terms "This Company," "This Company's," "This Road," "This Railroad," and "This Line," as used in this Tariff will be understood to mean the Louisiana & Arkansas Railway Company.

The term "competitive traffic," as used in this Tariff, except as otherwise provided in individual items, is all traffic, except that originating at or destined to stations served by the L. & A. Ry., only.

The term "non-competitive traffic," as used in this Tariff, is all traffic other than competitive traffic.

The term "less-than-carload," as used in this Tariff, will apply to such freight as is subject to the rates, rules, and regulations governing less than carload traffic.

The term "part carload," as used in this Tariff, will apply to such freight as is subject to the rates, rules, and regulations governing carload traffic.

GENERAL RULES

Item No. 5.[4]—Switching Delivery of Cars.—The L. & A. Ry. will place carload shipments arriving via its line, on public team delivery tracks or at industries, or warehouses reached by and served by its locomotives, free of switching charges. Such payment, when requested by consignees, will constitute delivery of the shipment. On carload shipments for forwarding to points on or via this line, from public team delivery tracks, industries, or warehouses reached by and served by its locomotives, no switching will be assessed. When carload shipments are placed on designated interchange tracks with other connecting railroads for switching to consignees' warehouses, or industries on such lines, such placement or delivery will constitute delivery of the shipment to consignee in so far as the responsibility of this company is concerned.

Item No. 10.[4]—Switching to and From Connecting Lines.—(a) The Louisiana & Arkansas Railway will switch loaded or empty cars between its interchange tracks with connecting lines, on the one hand, and firms, warehouses, and industries located on its line, having track facilities as specified herein, at the rates named in this tariff.

(b) This carrier will not accept from its connections carload shipments to be handled in switching service to its recognized public team or delivery tracks, to its freight warehouses, or to other sidings or switches within its yard limits where consignee have no facilities for unloading freight direct from car to warehouse without the use of drays.

(c) Cars handled in switch movement under load, will also be handled empty without charge, including delivery to connecting lines.

1056 Item No. 335[4]—Switching allowance to the Standard Oil Company of Louisiana, North Baton Rouge, La.

On all carload shipments (including trap cars containing 10,000 pounds or more of less-carload freight) destined to or coming from the plant of the Standard Oil Company of Louisiana at North Baton Rouge, La., the terminal switching service is performed by the Standard Oil Company of Louisiana for account of the Louisiana & Arkansas Railway. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for the Louisiana & Arkansas Railway by the Standard Oil Company of Louisiana at North Baton Rouge, La., on traffic to or from points on or reached via the Louisiana & Arkansas Railway or connections, the Standard Oil Company of Louisiana will be allowed $1.20 per loaded car, which will include the handling of the empty cars in the reverse direction.

BASIS FOR MAKING RATES

Item No. 340 [4]—Application of Baton Rouge, La., Rates at Maryland, La.

Maryland, La., is not within the switching limits of Baton Rouge, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Maryland, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from Maryland, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul).

Item No. 345 [4]—Application of Baton Rouge, La., Rates at Mengel, La.

Mengel, La., is not within the switching limits of Baton Rouge, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Mengel, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from Mengel, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 350 [4]—Application of Baton Rouge, La., Rates at North Baton Rouge, La.

In the absence of specific commodity rates to or from North Baton Rouge, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from North Baton Rouge, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 355 [4]—Application of Baton Rouge, La., Rates at Scotland, La.

Scotland, La., is not within the switching limits of Baton Rouge, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Scotland, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from Scotland, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 360 [4]—Application of Good Hope, La., Rates at Norco, La.

Norco, La., is not within the switching limits of Good Hope, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Norco, La., the rates as published and law-

fully on file with the Interstate Commerce Commission applying to or from Good Hope, La., will also apply to or from Norco, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 365 [4]—Application of Norco, La., Rates at Good Hope, La.

Good Hope, La., is not within the switching limits of Norco La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Good Hope, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Norco, La., will also apply to or from Good Hope, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 370 [4]—Application of New Orleans, La., Rates to or from Port Chalmette, and/or Three Oaks, La.

Except where specific rates applying via this line are published to or from Port Chalmette, La., in tariffs lawfully on file with the Interstate Commerce Commission, or the Louisiana Public Service Commission, as the case may be, the L. & A. Ry., when it receives a road haul, will apply the rates applicable to New Orleans, La., via its line, to or from Port Chalmette, La.

Except where specific rates applying via this line are published to or from Three Oaks, La., in tariffs lawfully on file with the Interstate Commerce Commission, or the Louisiana Public Service Commission, as the case may be, the L. & A. Ry., when it receives a road haul, will apply the rates as applicable to New Orleans, La., via its line, to or from Three Oaks, La.

Item No. 375 [1]—Application of Selma, La., Rates to or from Grant, La.

The same rates as are currently applicable to and from Selma, La., via the Missouri Pacific Railroad Company and its connections, will apply between Grant, La., on the one hand and points in Louisiana West of the Mississippi River, also New Orleans, La., on the other, on classes and commodities, consigned to or shipped by the Grant Timber and Manufacturing Company. (Amendment No. 1 to L. P. S. C. Authority No. 2541–R.)

1057 Ark. No. 27 (cancels Ark. No. 24). I. C. C. No. 1382 (cancels I. C. C. Nos. 1347 and 1374).

Louisiana & Arkansas Railway Company

Local Terminal Tariff No. 1789–K (cancels tariffs Nos. 1789–J and 3926–D) containing Rates, Rules, and Regulations Governing Switch-

ing, Drayage, and Handling, also Absorptions, Allowances, Custom House Brokerage Fees, Dunnage Charges, Grain Doors, Order Notify Shipments, Overloading of Cars, Tollage, Wharfage and Loading of Tropical Fruits, Weighing and Re-Weighing of Carload Freight, and Other Terminal Charges applicable at stations on the Louisiana & Arkansas Railway.

Issued except as otherwise provided herein under Louisiana Public Service Commission Authority No. 2892–R.

Governed, except as otherwise provided herein, by the Western Classification No. 61 (Consolidated Freight Classification No. 6), Agent R. C. Fyfe's I. C. C. No. 19, and by exceptions thereto in Sections 1 and 2 of Southwestern Lines' Tariff No. 173–B, Agent J. E. Johanson's I. C. C. No. 2333, and by supplements to or successive issues thereof of said publications.

Governed by Official List of Open and Prepay Stations No. 46, Agent F. A. Leland's I. C. C. No. A–11, supplements thereto or successive issues thereof, as to prepay requirements, changes in names of stations, additions and abandonment of stations, billing instructions from or to points not on railroads, restrictions as to non-acceptance or non-delivery of freight and changes in station facilities, except as otherwise shown herein.

All shipments handled under this tariff will be subject to established Demurrage and Storage Rules and Charges published in Tariffs lawfully on file with the Interstate Commerce Commission. Issued January 29, 1932. Effective March 3, 1932.

Authority No. 575. Tariff Case No. 55.

Issued by C. H. Atherton, Chief of Tariff Bureau, 110 Lake Street, Shreveport, La.

F. A. Key, Jr., Traffic Manager, Shreveport, La. W. R. Henry, Ass't Gen'l Freight Agent, Shreveport, La. W. C. Clark, Ass't Traffic Manager, Shreveport, La. J. A. Williamson, Ass't Gen'l Freight Agent, Shreveport, La. S. S. Senne, Ass't Gen'l Freight Agent, St. Louis, Mo.

1058 CANCELLATION OF APPLICATION OF VARIOUS ITEMS [3]

Application of various items and provisions of such items formerly published in L. & A. Ry. Local Terminal Tariff No. 1789–J, I. C. C. No. 1347, and not brought forward in this Tariff, are canceled on account of such provisions being obsolete, stations abolished, names changed, or no facilities for handling freight.

Explanation of Abbreviations, Symbols, and Technical Terms

Abbreviations

Abbreviation	Explanation
C. R. I. & P. Ry	The Chicago, Rock Island and Pacific Railway Company.
I. C. R. R	Illinois Central Railroad Company.
K. C. S. Ry	Kansas City Southern Railway Company, The.
L. & A. Ry	Louisiana & Arkansas Railway Company.
L. A. & T. Ry	Louisiana, Arkansas & Texas Railway Company.
L. & N. R. R	Louisville and Nashville Railroad Company.
L. & N. W. R. R	Louisiana and North West Railroad Company, The.
La. Sou. Ry	Louisiana Southern Railway Company.
Mo. P. R. R. or Mo. Pac. R. R	Missouri Pacific Railroad Company.
N. O. & L. C. R. R	New Orleans and Lower Coast Railroad Company.
N. O. T. & M. Ry	New Orleans, Texas & Mexico Railway Company.
N. O. & N. E. R. R	New Orleans and Northeastern Railroad Company.
N. O. G. N. R. R	New Orleans Great Northern Railroad Company.
N. O. P. B. R. R	New Orleans Public Belt Railroad Company.
N. O. T. Co	New Orleans Terminal Company.
St. L.-S. F. Ry	St. Louis-San Francisco Railway Company.
St. L. S. W. Ry	St. Louis Southwestern Railway Company.
S. L. B. & S. Ry	Sibley, Lake Bisteneau and Southern Railway Company, The.
T. & N. O. R. R	Texas and New Orleans Railroad Company.
T. & P. Ry	The Texas and Pacific Railway Company.
T. P.-M. P. T. R. R. of N. O	Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.
T. & G. Ry	Tremont & Gulf Railway Company.
The Y. & M. V. R. R	The Yazoo and Mississippi Valley Railroad Company.
Ark	Arkansas.
Cir	Circular.
Co	Company.
Etc	et cetera.
Frt	Freight.
I. e	That is.
Incl	Inclusive.
Inc	Incorporated.
La	Louisiana.
L. P. S. C	Louisiana Public Service Commission.
No	Number.
Nos	Numbers.
R. R	Railroad.
Ry	Railway.
S. S	Steamship.

Symbols

[1] Applies on Intrastate Traffic only.

[2] Denotes reduction.

[3] Denotes increase.

[4] Denotes changes in wording which result in neither increases nor reductions in charges.

Technical terms

The terms "This Line," and "This Carrier," as used in this Tariff will be understood to mean the Louisiana & Arkansas Railway Company.

The term "competitive traffic," as used in this Tariff, except as otherwise provided in individual items, is all traffic, except that originating at or destined to stations served by the L. & A. Ry. only.

The term "non-competitive traffic," as used in this Tariff, is all traffic other than competitive traffic.

The term "less-than-carload," as used in this Tariff, will apply to such freight as is subject to the rates, rules, and regulations governing less than carload traffic.

The term "part carload," as used in this Tariff, will apply to such freight as is subject to the rates, rules, and regulations governing carload traffic.

GENERAL RULES AND CHARGES

Item No. 5.—Application of Emergency Charges.—Charges resulting from the rates in this tariff, or as same may be amended, are subject to the provisions of Tariff of Emergency Charges, Southwestern Lines' No. 24, I. C. C. No. 2360, issued by J. E. Johanson, Agent, supplements thereto or successive issues thereof.

The Emergency Charges authorized in Southwestern Lines' Tariff No. 24, J. E. Johanson's I. C. C. No. 2360, will not apply on intrastate traffic, except to the extent specifically authorized by lettered supplement to that tariff. (Issued under authority of Special Permission of the Interstate Commerce Commission No. 110830 of December 24, 1931.) (S. W. F. B., R. N. 35301.)

Item No. 10.—Switching Delivery of Cars.—This Carrier will place carload shipments arriving via its line, on public team delivery tracks or at industries or warehouses reached by and served by its locomotives, free of switching charges. Such placement, when requested by consignees, will constitute delivery of the shipment. On carload shipments for forwarding to points on or via this Line, from public team delivery tracks, industries, or warehouses reached by and served by its locomotives, no switching will be assessed. When carload shipments are placed on designated interchange tracks with other connecting railroads for switching to consignees' warehouses or industries on such lines, such placement or delivery will constitute delivery of the shipment to consignee in so far as the responsibility of this Carrier is concerned.

1059 Item No. 380.—Switching Allowance to the Louisiana Development Company at Carla and Winnfield, La.—An allowance of $8.00 per car will be made to the Louisiana Development Company at Carla or Winnfield, La., on all carload shipments switched from or to its plant situated within the yard limits of those

stations, when the terminal switching service is performed by the Louisiana Development Company's locomotives. The terminal switching service for which this allowance is made consists of the handling of carload shipments between the point of interchange of such cars with this Carrier and the point at which such cars are loaded or unloaded at the Plant of the Louisiana Development Company (L. P. S. C. Authority No. 4529–R).

Item No. 385.—Switching Allowance to the Standard Oil Company of Louisiana, North Baton Rouge, La.—On all carload shipments (including trap cars containing 10,000 pounds or more of less-carload freight) destined to or coming from the plant of the Standard Oil Company of Louisiana at North Baton Rouge, La., the terminal switching service is performed by the Standard Oil Company of Louisiana for account of the Louisiana & Arkansas Railway. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for the Louisiana & Arkansas Railway by the Standard Oil Company of Louisiana at North Baton Rouge, La., on traffic to or from points on or reached via the Louisiana & Arkansas Railway or connections, the Standard Oil Company of Louisiana will be allowed $1.20 per loaded car, which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operations of the plant facilities made during period March 11, 1927, to March 17, 1927, inclusive, and filed with the Interstate Commerce Commission.

Item No. 390.—Application of Baton Rouge, La., Rates at Maryland, La.—Maryland, La., is not within the switching limits of Baton Rouge, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Maryland, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from Maryland, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 395.—Application of Baton Rouge, La., Rates at North Baton Rouge, La.—In the absence of specific commodity rates to or from North Baton Rouge, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from North Baton Rouge, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 400.—Application of Baton Rouge, La., Rates at Scotland, La.—Scotland, La., is not within the switching limits of Baton Rouge, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Scotland, La., the rates as published and

lawfully on file with the Interstate Commerce Commission applying to or from Baton Rouge, La., will also apply to or from Scotland, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 405.—Application of Good Hope, La., Rates at Norco, La.—Norco, La., is not within the switching limits of Good Hope, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Norco, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Good Hope, La., will also apply to or from Norco, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 410.—Application of Norco, La., Rates at Good Hope, La.—Good Hope, La., is not within the switching limits of Norco, La., but is located contiguous thereto, and in the absence of specific commodity rates to or from Good Hope, La., the rates as published and lawfully on file with the Interstate Commerce Commission applying to or from Norco, La., will also apply to or from Good Hope, La. (Applies on carload and less-than-carload shipments on which the L. & A. Ry. receives a road haul.)

Item No. 415—Application of New Orleans, La., Rates To or From Port Chalmette, and/or Three Oaks, La.—Except where specific rates applying via this Line are published to or from Port Chalmette, La., in tariffs lawfully on file with the Interstate Commerce Commission, or the Louisiana Public Service Commission, as the case may be, the L. & A. Ry., when it receives a road haul, will apply the rates applicable to New Orleans, La., via its line, to or from Port Chalmette, La.

Except where specific rates applying via this Line are published to or from Three Oaks, La., in tariffs lawfully on file with the Interstate Commerce Commission, or the Louisiana Public Service Commission, as the case may be, the L. & A. Ry., when it receives a road haul, will apply the rates as applicable to New Orleans, La., via its line, to or from Three Oaks, La.

Item No. 420.[1]—Application of Selma, La., Rates To or From Grant, La.—The same rates as are currently applicable to and from Selma, La., via the Missouri Pacific Railroad Company and its connections, will apply between Grant, La., on the one hand and points in Louisiana west of the Mississippi River, also New Orleans, La., on the other, on classes and commodities, consigned to or shipped by the Grant Timber and Manufacturing Company. (Amendment No. 1 to L. P. S. C. Authority No. 2541-R.)

1060 Supplement No. 42 to Ark. No. 27 (Supplements Nos. 24, 29, 37,[1] 40, 41, and 42 contain all changes from the original tariff that are effective on the date hereof).

Supplement No. 42 to I. C. C. No. 1382 (Supplements Nos. 24, 29, 37,[1] 40, 41, and 42 contain all changes from the original tariff that are effective on the date hereof).

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[1] Special supplement.

LOUISIANA & ARKANSAS RAILWAY COMPANY

Supplement No. 42

(Supplements Nos. 24, 29, "L," "M," 37,[1] "N," 40, 41, and 42 contain all changes from the original tariff that are effective on the date hereof.)

To local terminal Tariff No. 1789-K containing rates, rules, and regulations governing switching, drayage, and handling; also absorbtions, allowances, custom house brokerage fees, dunnage charges, grain doors, order notify shipments, overloading of cars, tollage, wharfage and loading of tropical fruits, weighing and reweighing of carload freight, and other terminal charges applicable at stations on the Louisiana & Arkansas Railway.

Issued June 12, 1935. Effective July 15, 1935.

Issued in compliance with Order of the Interstate Commerce Commission in Ex Parte No. 104 (Part 2, Terminal Services) of May 14, 1935.

This supplement is issued under authority of Rule 9 (m), Tariff Circular No. 20. It will be canceled by a new supplement or the tariff will be reissued, the new supplement or tariff to be filed on or before October 13, 1935.

Authority No. 575. Tariff Case No. 55.

Issued by F. A. Key, Jr., Traffic Manager, 110 Lake Street, Shreveport, La.

W. C. Clark, Ass't. Traffic Manager, Shreveport, La. W. R. Henry, Ass't. Gen'l. Frt. Agent, Shreveport, La. J. A. Williamson, Ass't. Gen'l. Frt. Agent, Shreveport, La. S. S. Senne, Ass't. Gen'l. Frt. Agent, St. Louis, Mo.

1061 Switching allowances.

Item No. 385-A (Cancels Item No. 385).

Switching allowance to the Standard Oil Company of Louisiana, North Baton Rouge, La.

Cancel.[2] No switching allowance in effect. (See Note.)

NOTE.—Issued in compliance with Order of the Interstate Commerce Commission in Ex Parte No. 104 (Part 2, Terminal Services) of May 14, 1935.

For Explanation of Abbreviations, Symbols, and Technical Terms not shown on this page, see Page 5 of Tariff, and as amended.

Finis.

1062 Application of Tariff of Emergency Charges.—Except as otherwise provided herein, charges resulting from the rates in this supplement are subject to Tariff of Emergency Charges, as provided in Supplement No. 37 (or successive issues thereof).

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[1] Special supplement.

Supplement No. 43 to Ark. No. 27 (cancels Supplement No. 42) (Supplements Nos. 24, 29, 37,[1] 40, 41, and 43 contain all changes from the original tariff that are effective on the date hereof).

Supplement No. 43 to I. C. C. No. 1382 (cancels Supplement No. 42) (Supplements Nos. 24, 29, 37,[1] 40, 41, and 43 contain all changes from the original tariff that are effective on the date hereof).

LOUISIANA & ARKANSAS RAILWAY COMPANY

Supplement No. 43

(Cancels Supplements Nos. "O" and 42). (Supplements Nos. 24, 29, "L," "M," 37,[1] "N," 40, 41, and 43 contain all changes from the original tariff that are effective on the date hereof.)

To local terminal Tariff No. 1789–K containing rates, rules, and regulations governing switching, drayage, and handling; also absorptions, allowances, custom house brokerage fees, dunnage charges, grain doors, order notify shipments, overloading of cars, tollage, wharfage and loading of tropical fruits, weighing and re-weighing of carload freight, and other terminal charges applicable at stations on the Louisiana & Arkansas Railway.

Issued July 13, 1935. Effective July 15, 1935.

Issued in compliance with interlocutory injunction granted by the United States District Court, Eastern District of Louisiana, Baton Rouge Division, dated July 12, 1935, in Equity No. 331, Standard Oil Company of Louisiana, Plaintiff, v. United States of America, et al., Defendants.

Authority No. 575. Tariff Case No. 55.

Issued by F. A. Key, Jr., Traffic Manager, 110 Lake Street, Shreveport, La.

W. C. Clark, Ass't Traffic Manager, Shreveport, La. W. R. Henry, Ass't Gen'l Frt. Agent, Shreveport, La. J. A. Williamson, Ass't Gen'l Frt. Agent, Shreveport, La. S. S. Senne, Ass't Gen'l Frt. Agent, St. Louis, Mo.

1063 Switching allowances.

(1) Item No. 385–B[2] (Cancels Items Nos. 385 and 385–A).

Switching allowance to the Standard Oil Company of Louisiana, North Baton Rouge, La.

On all carload shipments (including trap cars containing 10,000 pounds or more of less-carload freight) destined to or coming from the plant of the Standard Oil Company of Louisiana at North Baton Rouge, La., the terminal switching service is performed by the Standard Oil Company of Louisiana for account of the Louisiana & Arkansas Railway. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the

[1] Special supplement.

point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for the Louisiana & Arkansas Railway by the Standard Oil Company of Louisiana at North Baton Rouge, La., on traffic to or from points on or reached via the Louisiana & Arkansas Railway or connections, the Standard Oil Company of Louisiana will be allowed $1.20 per loaded car, which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operations of the plant facilities made during period March 11, 1927, to March 17, 1927, inclusive, and filed with the Interstate Commerce Commission.

(1) This schedule is issued in compliance with Interlocutory Injunction granted by the United States District Court, Eastern District of Louisiana, Baton Rouge Division, dated July 12, 1935, in Equity No. 331, Standard Oil Company of Louisiana, Plaintiff, v. United States of America, et al., Defendants, wherein the Court after enjoining enforcement, operation and execution of the Order of the Interstate Commerce Commission of May 14, 1935, in Ex Parte No. 104 (Part 2, Terminal Services), ordered that the Illinois Central Railroad Company, The Yazoo & Mississippi Valley Railroad Company, Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees) be and each of them are hereby required to cancel their respective tariffs as set forth in Paragraph VIII of the bill of complaint, to the extent that the same are in conformity with the said Order of the Interstate Commerce Commission, and to restore the terminal allowance as provided in their respective tariffs, as set forth in Paragraph IV of the bill of complaint.

For Explanation of Abbreviations, Symbols and Technical Terms not shown on this page, see Page 5 of Tariff, as amended.

Finis.

1064 Only two supplements to this tariff will be in effect at any time. I. C. C. No. A–6. (For cancellations see page 4.)

Terminal Charges Tariff No. 487

(For cancellations see page 4.)

Issued by the Frisco Lines; New Orleans, Texas & Mexico Railroad Co.; The Beaumont, Sour Lake & Western Railway Company (FX5–10); The Orange & Northwestern Railroad Company (FX5–10).

Publishing rates, rules, and regulations governing switching, drayage, handling, transfer, storage, and demurrage charges; also Custom House Brokerage Fees, Dunnage Charges, Live Stock Feed Charges, Loading on Tropical Fruits, Mileage on Private Car Equipment, Minimum Carload Weight, Order Notify Shipments, Reconsignment, Diversion, Change of Consignee or Destination, Refrigerating Rates, Rules and Regulations, Rental Charges on Private Car Equipment,

Transportation of Empty, Tank, Horse, Poultry and Cattle Car Equipment, and other Terminal Charges.

Applicable at all stations on the New Orleans, Texas & Mexico Railroad; Beaumont, Sour Lake & Western Railway; Orange & Northwestern Railroad; also switching charges of connecting lines at junction points.

Switching at points in Louisiana covered by Railroad Commission of Louisiana, Authority No. 7124.

Issued June 16, 1910. Effective June 24, 1910 (except as noted in individual items).

Issued under special permission of the Interstate Commerce Commission No. 13378, of May 25, 1910.

Issued by W. C. Connor, Jr., Traffic Manager, Beaumont, Tex.

Roy Terrell, Assistant General Freight Agent, New Orleans, La.

Authority File No. 362.

1065 Item No. 17—Switching Less Than Carload Shipments at New Orleans, La.—(a) A car containing less than 10,000 pounds of less than carload freight traffic will not be handled in switch movement for shipment over the rails of the N. O. T. & M. R. R.

(b) Less than carload shipments of 10,000 pounds or more of freight traffic destined to competitive points, or to competitive and noncompetitive points, when in the aggregate, loaded into a car by a shipper at an industry or warehouse, located on the tracks of the N. O. T. & M. R. R. in New Orleans, La., or at an industry or warehouse located on the tracks of connecting and switching railroads in New Orleans, La., will be switched to the Basin Street depot of the N. O. T. & M. R. R. for handling and shipment over the rails of that line, under the terms and conditions shown below.

(c) If the car contains not less than 10,000 pounds of freight traffic destined to competitive points, the N. O. T. & M. R. R. will make no charge for car rental or switching service, which they perform on such car, and (except as noted in paragraph "e") the N. O. T. & M. R. R. will absorb the switching charge of connecting and switching railroads, but will not absorb the car rental charges of such railroads.

(d) If the car contains less than 10,000 pounds of freight traffic destined to competitive points, and the deficiency in weight is made up of shipments destined to non-competitive points, the N. O. T. & M. R. R. will assess the established switching charge to its Basin Street depot, but no car rental charge will be assessed. On such cars, the switching and car rental charges of connecting and switching railroads will not be absorbed by the N. O. T. & M. R. R.

(e) The N. O. T. & M. R. R. will not absorb car rental or switching charges of connecting and switching railroads on less than carload shipments from Algiers, Amesville, Company Canal, Goulds-boro, Gretna, Harvey, Powell, Southside, and Westwego, La., nor similar charges of the Louisiana Southern Ry., on less than carload shipments loaded on that line.

Item No. 18—Free Switching, Delivery of Cars.—(a) The New Orleans, Texas & Mexico R. R., Beaumont, Sour Lake & Western Ry., and Orange & Northwestern R. R. will place carload shipments arriving via their lines on team delivery tracks, or to industries, switches, or warehouses reached by and connecting with the tracks of these lines, free of switching charges. On carload shipments for forwarding to points on or via these lines, from team delivery tracks, industries, switches, or warehouses reached by and connecting with the tracks of these lines, no switching charge will be assessed.

(b) Upon request of the shippers or consignees carload shipments arriving at destination via the N. O. T. & M. R. R., B. S. L. & W. Ry., or O. & N. W. R. R. will be placed on team delivery tracks or to industries, switches, or warehouses reached by, and connecting with, the tracks of these lines, and such placement or delivery shall constitute delivery of freight to the consignee. When carload shipments are placed on the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to the consignee, so far as concerns the duty of these lines.

(c) On any subsequent switch movements on these lines in Louisiana, the rules in this tariff will apply, and these lines will assess a switching charge of two and one half dollars ($2.50) per car per movement, except New Orleans, La., in which case the switching charge will be two dollars ($2.00) per car per movement.

When no part of the shipment has been unloaded nor additional freight placed in the car, car rental will not be assessed, but when any part of the shipment has been unloaded or additional freight has been placed in the car, and request is then made for the car to be moved, three dollars ($3.00) per car for car rental will be assessed in addition to the switching charge. (See paragraph "d.") (Applies on Louisiana interstate and intra-state shipments only.)

(d) Except as otherwise provided, no car rental will be assessed by these lines on cars furnished by connecting lines or private owners, when such cars are furnished without expense to these lines.

Item No. 19—Local Switching.—T. N. O. T. & M. R. R. will not perform local (inter-yard) switching to or from switches, tracks, industries, or warehouses located on their tracks or connecting lines' tracks, at any point on these lines. Such switching is prohibited, except where specifically provided herein.

Item No. 20—Absorption of Switching Charges of Connecting Lines (see Items No. 73 and 74). (a) On carload competitive tariff (see Item No. 22) received or forwarded via these lines for or from industries, switches, and warehouses located on tracks of connecting lines, the switching charges of connecting lines performing the service as published and lawfully on file with the Interstate Commerce Commission, on interstate; or as authorized by the Railroad Commission of Texas or Railroad Commission of Louisiana, on intra-

state traffic, will be absorbed by these lines. (Except as provided in paragraph (k).)

1066 Only two supplements to this tariff will be in effect at Any Time. R. C. T. No. 42 (Cancels R. C. T. Nos. 18 and 24). I. C. C. No. A–874 (Cancels I. C. C. Nos. A–672 and A–766).

GULF COAST LINES

Freight Tariff of New Orleans, Texas & Mexico Railway Company, in connection with the Beaumont, Sour Lake & Western Railway Company (FX–4, No. 40); the Orange & Northwestern Railroad Company (FX–4, No. 35); New Iberia & Northern Railroad Company (FX–4, No. 12); the St. Louis, Brownsville and Mexico Railway Company (FX–4, No. 15); San Benito and Rio Grande Valley Railway Company (FX–4, No. 1).

Terminal Charges Tariff No. 487–F

(Cancels Tariffs Nos. 487–E and 1264–C.)

Publishing rates, rules, and regulations governing switching, drayage, handling, and transfer charges; also dunnage charges, mileage on private car equipment, order notify shipments, stop-over privileges on cars in transit, transportation of empty tank, horse, poultry, and cattle car equipment, and other terminal charges.

Applicable at Stations Shown in Item No. 35 on the Beaumont, Sour Lake & Western Railway; New Iberia & Northern Railroad; New Orleans, Texas & Mexico Railway; Orange & Northwestern Railroad; San Benito & Rio Grande Valley Railway; St. Louis, Brownsville & Mexico Railway.

Issued April 7, 1926. Effective May 12, 1926.

Issued by R. L. McLennan, General Freight Agent, Houston, Texas.

File 16–2. Case 29.

1067 Item No. 450.—Free Switching Delivery of Cars.—(a) These lines will place carload shipments arriving via their lines on team delivery tracks, or to industries, switches, or warehouses reached by and connecting with the tracks of these lines, free of switching charges. On carload shipments for forwarding to points on or via these lines, from team delivery tracks, industries, switches, or warehouses reached by and connecting with the tracks of these lines, no switching charge will be assessed.

(b) Upon request of the shippers or consignees carload shipments arriving at destination via these lines will be placed on team delivery tracks or to industries, switches, or warehouses reached by, and connecting with, the tracks of these lines, and such placement or delivery shall constitute delivery of freight to the consignee. When carload shipments are placed on the usual interchange track with

other connecting railroads, such placement or delivery shall constitute delivery of the freight to the consignee, so far as concerns the duty of these lines.

(c) Loaded cars for unloading and empty cars to be loaded by other than parties having the right to use private side tracks, will not be placed on such private side tracks, but on the recognized public or team delivery track.

(e) When a loaded or an empty car is switched or placed on a recognized public or team delivery track, or on a private side track for unloading or loading, and is only partially unloaded or loaded, and is again switched to another location on a recognized public or team delivery track, or to a private track to finish unloading or loading, the movement will be considered as extra service and switching charges provided herein will be assessed for such extra service.

The above paragraph is to apply only on cars received via this line loaded or to be forwarded via this line loaded.

(f) (Applies on Louisiana Interstate and Intrastate shipments only.) When no part of the shipment has been unloaded nor additional freight placed in the car, car rental will not be assessed, but when any part of the shipment has been unloaded or additional freight has been placed in the car, and request is then made for the car to be moved, four dollars ($4.00) per car for car rental will be assessed in addition to the switching fare. (See paragraph "g.")

(g) Except as otherwise provided, no car rental will be assessed by these lines on cars furnished by connecting lines or private owners, when such cars are furnished without expense to these lines.

Item No. 452.—Switching From Baton Rouge, La., to North Baton Rouge, La.—Less than carload shipments, without regard to quantity or minimum, consigned to or in care of Standard Oil Company of Louisiana, Union Tank Car Company, arriving at Baton Rouge, La., via the N. O. T. & M. Ry., will be loaded in cars and switched to the Standard Oil Company, Union Tank Car Company, North Baton Rouge, La.

Item No. 455.—Intra-Terminal Switching at Points in Louisiana (Applicable Only on Louisiana Intrastate Traffic.).—(a) The N. O. T. & M. Ry. and N. I. & N. R. R. do not engage in the business of local switching between switches, tracks, warehouses, or industries reached by their rails, but where such service is performed as a matter of accommodation, and the N. O. T. & M. Ry. or N. I. & N. R. R. furnishes the empty car, unless otherwise clearly stated in this Tariff under proper specific heading, an extra charge of Four Dollars and Ninety-five Cents ($4.95) per car will be assessed in addition to the regular switching charge specified in this Tariff.

(b) The additional switching charges specified in Paragraph (a) will not be assessed by the N. O. T. & M. or N. I. & N. Railroads where shippers, whose goods are being handled, furnish their own private cars without expense to the railroad.

Item No. 457.—Intra-Plant, Intra-Terminal, and Inter-Terminal Switching:

Intra-Plant Switching.—A switching movement from one track to another within the same plant or industry.

Intra-Terminal Switching.—A switching movement (other than intra-plant switching) from one track to another of the same road within the switching limits of one station or industrial switching district.

Inter-Terminal Switching.—A switching movement from a track of one road to a track of another road when both tracks are within the switching limits of the same station or industrial switching district.

Item No. 458.—Switching Charges.—When cars are switched from an industry to another for unloading or loading within switching limits of station proper, the charge will be $3.15 per car in connection with a Line or Road Haul, $3.60 per car on Intra-Plant Switching, or $3.60 per car on Inter-Terminal Switching, or $6.30 per car on Intra-Terminal Switching.

1068 Supplement No. 22 to R. C. T. No. 42. (Cancels Supplements Nos. 16 and 21.) (Supplement No. 22 contains all changes.)

Supplement No. 22 to I. C. C. No. A–874. (Cancels Supplements Nos. 16 and 21.) (Supplement No. 22 contains all changes from the Original Tariff that are effective on the date hereof.)

GULF COAST LINES

Freight tariff of New Orleans, Texas & Mexico Railway Company in connection with the Beaumont, Sour Lake & Western Railway Company (FX–4, No. 40); Illinois[1] Central Railroad Company (FX–5, No. 77); the Orange & Northwestern Railroad Company (FX–4, No. 35); New Iberia & Northern Railroad Company (FX–4, No. 12); the St. Louis, Brownsville, and Mexico Railway Company (FX–4, No. 15); San Benito and Rio Grande Valley Railway Company (FX–4, No. 1); The Yazoo[1] and Mississippi Valley Railroad Company (FX–5, No. 38).

Supplement No. 22

Cancels Supplements Nos. 16 and 21.

Supplement No. 22 contains all changes to Terminal Charges Tariff No. 487–F, publishing rates, rules, and regulations governing switching, drayage, handling, and transfer charges; also dunnage charges, mileage on private car equipment, order notify shipments, stop-over privileges on cars in transit, transportation of empty tank,

[1] Reissue: Effective January 18, 1928, in Supplement No. 15.

horse, poultry, and cattle car equipment, transit [2] privileges, and other terminal charges.

Applicable at stations shown in Item No. 35, or reissues on the Beaumont, Sour Lake & Western Railway; New Iberia & Northern Railroad; New Orleans, Texas & Mexico Railway; Orange & Northwestern Railroad; San Benito & Rio Grande Valley Railway; St. Louis, Brownsville & Mexico Railway.

Issued May 28, 1928. Effective July 8, 1928. (Except as noted.)
Issued by J. E. Bailey, General Freight Agent, Houston, Texas.
File: 16-2. Case 3.

1069 Item No. 445-A—Handling Less Carload Shipments from Warehouses and Industries Located at New Orleans, La., to Forwarding Depots—Continued.

(e) On less than carload shipments contained in such cars the less than carload through rate from New Orleans, La., to final destination will be applied.

Part carload shipments may be concentrated at the freight depot of the N. O. T. & M. Ry. and will be handled at through carload rate from New Orleans, La., to final destination according to rules and regulations contained in tariffs, classification and exception sheets lawfully on file with the Louisiana Public Service Commission or Interstate Commerce Commission.

(f) The term "less than carload" traffic as used in the this item is meant to cover such freight as is subject to rates, rules, and regulations governing less than carload traffic.

The term "part carload" traffic as used in this item is meant to cover such freight as is subject to carload rates, rules, and regulations.

NOTE A.—Where the switching charges of the New Orleans Public Belt Railroad, as lawfully on file with the Louisiana Public Service Commission or Interstate Commerce Commission, is in excess of $6.30 per car of any capacity, the N. O. T. & M. Ry. will absorb switching charge to the extent of $6.30 per car only, except when shipments under this rule are handled from connections of other lines in New Orleans, La., to the connection of the N. O. T & M. Ry. in New Orleans, La., by the New Orleans Public Belt Railroad as an intermediate carrier, the N. O. T. & M. Ry. will absorb not to exceed $2.25 per car of any capacity, of the charges assessed by the New Orleans Public Belt Railroad to cover such intermediate switching. Charges in excess of amounts specified above will be in addition to the freight rate.

Item No. 452-A—Cancels No. 452. Reissue: Effective June 3, 1927, in Supplement No. 11.—Switching at Baton Rouge, La., North Baton Rouge, La., Maryland, La., Scotland, La., Istruma, La., University, La., and/or Baton Rouge Downtown Terminal, La.—(a) Less than carloads without regard to quantity or minimum, consigned to or in

[2] Reissue: Effective August 15, 1927, in Supplement No. 12.

care of Standard Oil Company of Louisiana, Union Tank Car Company, arriving at Baton Rouge, La., via the N. O. T. & M. Ry. will be loaded in cars and switched to the Standard Oil Company, Union Tank Car Company, North Baton Rouge, La.

(b) On all carload Interstate traffic originating or destined to industrial switches, side tracks and/or warehouses located at Maryland, Mengal, Scotland, Istruma, University, and/or Baton Rouge Belt Downtown Terminal, La., the N. O. T. & M. will protect Baton Rouge, La., rates as published and lawfully on file with the Interstate Commerce Commission and absorb switching charges as published in Illinois Central-Y. & M. V. Tariff No. 2-B, I. C. C. No. 6700, and/or L. R. & N. Company Tariff No. 1400-F, I. C. C. No. A-944, supplements thereto or reissues thereof.

Item No. 453—Reissue: Effective August 15, 1927, in Supplement No. 12—Terminal Allowances to the Standard Oil Company of Louisiana at North Baton Rouge, La.—On traffic to and from points on or reached via the New Orleans, Texas & Mexico Railway Company or connections.

On all carload shipments, including trap cars containing 10,000 pounds or more of less-carload freight destined to or coming from the plant of the Standard Oil Company of Louisiana at North Baton Rouge, La., the terminal switching is performed by the Standard Oil Company of Louisiana for account of the New Orleans, Texas & Mexico Railway Company. Such terminal switching service for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for the New Orleans, Texas & Mexico Railway Company by the Standard Oil Company of Louisiana at North Baton Rouge, La., the Standard Oil Company of Louisiana will be allowed $1.20 per loaded car, which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average cost of the service as disclosed in a joint study of the operations of the plant facility made during period March 11, 1927, to March 17, 1927, inclusive, and filed with the Interstate Commerce Commission by The Yazoo and Mississippi Valley Railroad Company which latter company performs all necessary switching at Baton Rouge and North Baton Rouge, La., for account of the New Orleans, Texas & Mexico Railway Company. (File 11-260.)

Item No. 458-A—Cancels No. 458—Switching Charges.—When cars are switched from one industry to another for unloading or loading within switching limits of station proper, the charge will be $3.60 per car on Intra-Plant Switching or Inter-Terminal Switching, and $6.30 per car on Intra-Terminal Switching.

Item No. 470-D—Cancels No. 470-C—Switching Reconsigned Shipments of Grain, Grain Products, and Hay in Straight or Mixed Carloads—

(When for Export or Coastwise Movement Only)

Applying on	From	To	Rate per car
Grain, Grain Products and Hay, carloads, arriving at New Orleans La., via These Railroads, also Mixed Feed, carloads, the ingredients of which arrive at New Orleans, La., via These Railroads will be switched in straight or mixed carloads when, for export or coastwise movement only. (File 7-7, 16-2)	Elevators D and E at Stuyvesant Docks. Elevator C in Poydras Yard. Poydras Warehouses on These Railroads. New Basin Warehouses and Elevator (Jno. T. Gibbons) in Government Yard. New Orleans Hay Warehouse, Inc., in Poydras Yard. Public Grain Elevator, foot of Soniat Street. Gentilly Elevators. (Milam-Morgan Co., Ltd.)	Fruit Wharf on N. O. & N. E. R. R. at foot of Press Street. United Fruit Co.'s Wharf on L. & N. R. R. at Levee Front and Julia Street. City Front Wharfs served by N. O. P. B. R. R. Sunset Switch, Morgan's S. S. Line.	Switching and car rental free and except on bulk freight when the freight rate applies to shipside, These Railroads will absorb cost of unloading from cars. (The switching charges of connecting lines will be absorbed by These Railroads.) (When for carriers convenience shipments are drayed from elevators or warehouse to steamship line wharves, the drayage charges will be absorbed. No allowance will be paid to shippers for drayage on such traffic.)

1070 I. C. C. No. A-1017. (Cancels I. C. C. No. A-874, Except Portions Under Suspension in I. & S. Docket No. 3130.) (For Additional Cancellations See Page 4.)

GULF COAST LINES

Freight tariff of New Orleans, Texas & Mexico Railway Company in connection with the Beaumont, Sour Lake & Western Railway Company (Eliminate. See Note). The Orange & Northwestern Railroad Company (Eliminate. See Note). New Iberia & Northern Railroad Company (FX-4, No. 12). The St. Louis, Brownsville and Mexico Railway Company (Eliminate. See Note). San Benito and Rio Grande Valley Railway Company (Eliminate. See Note).

Terminal Charges Tariff No. 487-G

Cancels Tariff No. 487-F Publishing Rates, Rules, and Regulations governing switching, drayage, handling, and transfer charges; also dunnage charges, mileage on private car equipment, order notify shipments, stop-over privileges on cars in transit, transportation of empty tank, horse, poultry, and cattle car equipment, and other terminal charges.

Applicable at stations shown in Item No. 20 on the New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railway Company.

NOTE.—For Cancellation see Page 4 Herein.

Issued December 14, 1929. Effective January 17, 1930.

Except as Otherwise Provided, All Changes Herein are Other than Increase or Reduction.

Issued by J. E. Bailey, General Freight Agent, Room 412 Union Station, Houston, Texas.

File 16-2. Case 29.

1071 Item No. 405.—Free Switching Delivery of Cars.—(a) These lines will place carload shipments arriving via their lines on team delivery tracks, or to industries, switches, or warehouses reached by and connecting with the tracks of these lines, free of switching charges. On carload shipments for forwarding to points on or via these lines from team delivery tracks, industries, switches, or warehouses reached by and connecting with the tracks of these lines, no switching charge will be assessed.

(b) Upon request of the shippers or consignees, carload shipments arriving at destination via these lines will be placed on team delivery tracks or to industries, switches, or warehouses reached by, and connecting with, the tracks of these lines, and such placement or delivery shall constitute delivery of freight to the consignee. When carload shipments are placed on the usual interchange track with other connecting railroads, such placement or delivery shall constitute delivery of the freight to the consignee, so far as concerns the duty of these lines.

(c) Loaded cars for unloading and empty cars to be loaded by other than parties having the right to use private side tracks, will not be placed on such private side tracks, but on the recognized public or team delivery track.

(d) When a loaded or an empty car is switched or placed on a recognized public or team delivery track, or on a private side track for unloading or loading, and is only partially unloaded or loaded, and is again switched to another location on a recognized public or team delivery track, or to a private track to finish unloading or loading, the movement will be considered as extra service, and switching charges provided herein will be assessed for such extra service.

The above paragraph is to apply only on cars received via this line loaded or to be forward via this line loaded.

(e) (Applies on Louisiana Interstate and Intrastate shipments only.) When no part of the shipment has been unloaded nor additional freight placed in the car, car rental will not be assessed, but when any part of the shipment has been unloaded or additional freight has been placed in the car, and request is then made for the car to be moved, four dollars ($4.00) per car for car rental will be assessed in addition to the switching fare. (See paragraph "g".)

(f) Except as otherwise provided, no car rental will be assessed by these lines on cars furnished by connecting lines or private owners, when such cars are furnished without expense to these lines.

Item No. 410.—Switching at Baton Rouge, La., North Baton Rouge, La., Scotland, La., Istruma, La., University, La., and/or Baton Rouge Downtown Terminal, La.—(a) Less than carloads without regard to quantity or minimum, consigned to or in care of Standard Oil

Company of Louisiana, Union Tank Car Company, arriving at Baton Rouge, La., via the N. O. T. & M. Ry. will be loaded in cars and switched to the Standard Oil Company, Union Tank Car Company, North Baton Rouge, La.

(b) On all carload Interstate traffic originating or destined to industrial switches, side tracks, and/or warehouses located at Mengal, Scotland, Istruma, University, and/or Baton Rouge Belt Downtown Terminal, La., the N. O. T. & M. will protect Baton Rouge, La., rates as published and lawfully on file with the Interstate Commerce Commission and absorb switching charges as published in Illinois Central-Y. & M. V. Tariff No. 2–B, I. C. C. No. 6700, and/or L. & A. Tariff No. 1789–I, I. C. C. No. 1319, supplements thereto or reissues thereof.

Item No. 415.—Terminal Allowances to the Standard Oil Company of Louisiana at North Baton Rouge, La.—On traffic to and from points on or reached via the New Orleans, Texas & Mexico Railway Company or connections.

On all carload shipments, including trap cars containing 10,000 pounds or more of less-carload freight destined to or coming from the plant of the Standard Oil Company of Louisiana at North Baton Rouge, La., the terminal switching is performed by the Standard Oil Company of Louisiana for account of the New Orleans, Texas & Mexico Railway Company. Such terminal switching service for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for the New Orleans, Texas & Mexico Railway Company by the Standard Oil Company of Louisiana at North Baton Rouge, La., the Standard Oil Company of Louisiana will be allowed $1.20 per loaded car, which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average cost of the service as disclosed in a joint study of the operations of the plant facility made during period March 11, 1927, to March 17, 1927, inclusive, and filed with the Interstate Commerce Commission by The Yazoo and Mississippi Valley Railroad Company which latter company performs all necessary switching at Baton Rouge and North Baton Rouge, La., for account of the New Orleans, Texas & Mexico Railway Company. (File 11–260.)

Item No. 420.—Intra-Terminal Switching at Points in Louisiana (Applicable Only on Louisiana Intrastate Traffic).—(a) The N. O. T. & M. Ry. and N. I. & N. R. R. do not engage in the business of local switching between switches, tracks, warehouses, or industries reached by their rails, but where such service is performed as a matter of accommodation, and the N. O. T. & M. Ry. or N. I. & N. R. R. furnishes the empty car, unless otherwise clearly stated in this Tariff under proper specific heading, an extra charge of Four Dollars and

Ninety-five Cents ($4.95) per car will be assessed in addition to the regular switching charge specified in this Tariff.

(b) The additional switching charges specified in Paragraph (a) will not be assessed by the N. O. T. & M. or N. I. & N. Railroads where shippers, whose goods are being handled, furnish their own private cars without expense to the railroad.

1072 Supplement No. 42 to I. C. C. No. A-1017. Cancels Supplement No. 38.

Supplements Nos. 39, 40, 41, and 42 contain all changes from the original Tariff that are effective on the date hereof.

Charges resulting from the rates in this supplement are subject to the provisions of Supplement No. 40.

GULF COAST LINES

Freight tariff of New Orleans, Texas & Mexico Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees). In connection with New Iberia & Northern Railroad Company (FX-4, No. 12).

Supplement No. 42

Cancels Supplement No. 38. Supplements Nos. 39, 40, 41, and 42 contain all changes to Terminal Charges Tariff No. 487-G Publishing rates, rules, and regulations governing switching, drayage, handling, and transfer charges; also dunnage charges, mileage on private car equipment, order notify shipments, stop-over privileges on cars in transit, transportation of empty tank, horse, poultry, and cattle car equipment, and other terminal charges.

Applicable at stations shown in item No. 20 on the New Iberia & Northern Railroad Company, New Orleans, Texas & Mexico Railway Company.

Issued June 13, 1935. Effective July 15, 1935 (Except as otherwise provided herein).

Departure from the terms of Rule 9 (e) of Tariff Circular No. 20 is authorized under Special Permission of the Interstate Commerce Commission, No. 133575, of February 20, 1934.

Issued by J. E. Bailey, General Freight Agent, Room 412 Union Station, Houston, Texas.

File 16-2, 6-68, 1-446, 1-481. Case 29.

1073 Item No. 345-A, Cancels No. 345.—Absorption of Switching Charges of Connecting Lines at Junction Points in Louisiana Exceptions—Concluded.

(7) On High Explosives carload competitive traffic (see Item No. 30) received or forwarded via N. O. T. & M. Ry. for or from industries, switches or warehouses located on tracks of the New Orleans Public Belt Railroad, New Orleans, La., the N. O. T. & M. Ry. will absorb amount not exceeding $12.00 per car of the switching charges of the New Orleans Public Belt Railroad lawfully on file with the Interstate Commerce Commission. Charges of the New Orleans Pub-

lic Belt Railroad in excess of such amount will be in addition to the freight rate.

(8) On Carload shipments of Lumber and articles taking same rates, except as otherwise provided, originating at non-competitive points where the rate is 15 cents per 100 pounds or higher, these lines will absorb the switching charges of connecting lines necessary to effect delivery at destination, except as otherwise provided in Items Nos. 470 to 510.

NOTE.—Intermediate points as per Agent H. B. Cummins' I. C. C. No. 318, Agent J. E. Johanson's I. C. C. No. 2321, supplements thereto or reissues thereof.

Item No. 400–A,[1] Cancels No. 400.—Handling Less Carload Shipments From Warehouses and Industries Located at New Orleans or Three Oaks, La., to Forwarding Depots—(a) Six thousand pounds or more of less than carload or part carload freight traffic (individually or in the aggregate) destined to competitive points, or competitive and non-competitive points, when in the aggregate (except that at least six thousand pounds of such traffic must be consigned to competitive points, Anchorage, La., and west via the N. O. T. & M. Ry.), loaded into a car by shipper at an industry located on the N. O. T. & M. Ry. at New Orleans or Three Oaks, La., or on the tracks of connecting lines at such points, which provide for the handling of less than carload shipments of that quantity, will be switched to the freight depot of the N. O. T. & M. Ry. for handling and shipment over the rails of that line under the terms and conditions shown below.

(b) A car containing less than six thousand pounds of less than carload or part carload freight traffic will not be handled in switch movement for shipment over the rails of the N. O. T. & M. Ry.

(c) The freight revenue on the total consignment of outbound competitive freight traffic in each car received from connecting lines handled under these rules must not be less than $14.50.

(d) If the car contains not less than six thousand pounds of freight traffic destined to competitive points, the N. O. T. & M. Ry. will make no charge for car rental or switching service which they perform on such cars, and the N. O. T. & M. Ry. will absorb the switching charge of connecting and switching railroads, not to exceed $2.25 per car (except as specifically provided in Note A below), but will not absorb the car rental of such railroad.

(e) On less than carload shipments contained in such cars the less than carload through rate from New Orleans, La., to final destination will be applied.

Part carload shipments may be concentrated at the freight depot of the N. O. T. & M. Ry. and will be handled at through carload rate from New Orleans or Three Oaks, La., as the case may be, to final destination according to rules and regulations contained in

[1] Reissued from Supplement No. 33, effective August 15, 1934.

tariffs, classification and exception sheets lawfully on file with the Louisiana Public Service Commission or Interstate Commerce Commission.

(f) The term "less than carload" traffic as used in this Item is meant to cover such freight as is subject to rates, rules, and regulations governing less than carload traffic.

The term "part carload" traffic as used in this Item is meant to cover such freight as is subject to carload rates, rules, and regulations.

NOTE A.—Where the switching charges of the New Orleans Public Belt Railroad, as lawfully on file with the Louisiana Public Service Commission or Interstate Commerce Commission, is in excess of $6.30 per car of any capacity, the N. O. T. & M. Ry. will absorb switching charge to the extent of $6.30 per car only, except when shipments under this rule are handled from connections of other lines in New Orleans, La., to the connection of the N. O. T. & M. Ry. in New Orleans, La., by the New Orleans Public Belt Railroad as an intermediate carrier, the N. O. T. & M. Ry. will absorb not to exceed $2.25 per car of any capacity, of the charges assessed by the New Orleans Public Belt Railroad to cover such intermediate switching. Charges in excess of amounts specified above will be in addition to the freight rate.

Effective July 15, 1935.[2]

Item No. 415-A, Cancels No. 415.—Terminal allowances to the Standard Oil Company of Louisiana at North Baton Rouge, La.—Cancelled.[3] Allowance discontinued.

1074 APPLICATION OF TARIFF OF EMERGENCY CHARGE

Except as otherwise provided herein, charges resulting from the rates in this supplement are subject to Tariff of Emergency Charges, as provided in Supplement No. 40 (or successive issues thereof). Supplement No. 44 to I. C. C. No. A-1017. Supplements Nos. 39, 40, 41, 43, and 44 contain all changes from the original Tariff that are effective on August 1, 1935.

GULF COAST LINES

Freight Tariff of New Orleans, Texas & Mexico Railway Company (L. W. Baldwin and Guy A. Thompson, Trustees) in connection with New Iberia & Northern Railroad Company (FX-4, No. 12).

Supplement No. 44

Supplements Nos. 39, 40, 41, 43, and 44 contain all changes to Terminal Charges Tariff No. 487-G publishing Rates, Rules, and Regulations Governing Switching, Drayage, Handling, and Transfer

[2] Issued in compliance with Interstate Commerce Commission's order in fourth supplemental report in Ex Parte 104 of May 14, 1935.

[3] Indicates advance.

Charges also Dunnage Charges, Mileage on Private Car Equipment, Order Notify Shipments, Stop-Over Privileges on Cars in Transit, Transportation of Empty Tank, Horse, Poultry, and Cattle Car Equipment, and other terminal charges, applicable at stations shown in Item No. 20 on the New Iberia & Northern Railroad Company, New Orleans, Texas & Mexico Railway Company. Issued July 13, 1935. Effective July 15, 1935.

Issued by reason of temporary restraining order of District Court of the United States, for the Eastern District of Louisiana, July 12, 1935, against the order of the Interstate Commerce Commission in Ex Parte 104, Part 11, Terminal Services. Issued by J. E. Bailey, General Freight Agent, Room 412, Union Station, Houston, Texas.

File 11–260. Case 29. (400—Authy. 2686.)

1075 Supplement No. 44 to Terminal Charges Tariff No. 487–G. Effective July 15, 1935. Item No. 415–B, Cancels Nos. 415 and 415–A.[1]

Terminal Allowances to the Standard Oil Company of Louisiana at North Baton Rouge, La.

On traffic to and from points on or reached via the New Orleans, Texas & Mexico Railway Company or connections.

On all carload shipments, including trap cars containing 10,000 pounds or more of less-carload freight destined to or coming from the plant of the Standard Oil Company of Louisiana at North Baton Rouge, La., the terminal switching is performed by the Standard Oil Company of Louisiana for account of the New Orleans, Texas & Mexico Railway Company. Such terminal switching service for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

For such terminal service performed for the New Orleans, Texas & Mexico Railway Company by the Standard Oil Company of Louisiana at North Baton Rouge, La., the Standard Oil Company of Louisiana will be allowed $1.20 per loaded car, which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average cost of the service as disclosed in a joint study of the operations of the plant facility made during period March 11, 1927, to March 17, 1927, inclusive, and filed with the Interstate Commerce Commission by The Yazoo and Mississippi Valley Railroad Company which latter company performs all necessary switching at Baton Rouge and North Baton Rouge, La., for account of the New Orleans, Texas & Mexico Railway Company. (File 11–260.)

Finis.

[1] Indicates change other than advance or reduction.

1076 CERTIFICATE AS TO ORIGINAL EXHIBITS

In the District Court of the United States for the Southern District of Texas, Houston Division

In Equity No. 690 (Houston Division)
HUMBLE OIL & REFINING COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 691 (Houston Division)
MAGNOLIA PETROLEUM COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 692 (Houston Division)

THE TEXAS COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 693 (Houston Division)
GULF REFINING COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 718 (Houston Division)
THE TEXAS COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

I, L. C. Masterson, Clerk, of the District Court of the United States, for the Southern District of Texas, do hereby certify that the foregoing exhibits were introduced in evidence upon the trial of the above entitled and numbered causes, and are herewith transmitted as a part of the Transcript of Record to the Supreme Court of the United States, in accordance with the Order of the Court on Page 713 of said Record on Appeal, viz:

The following documents introduced in Nos. 690, 691, 692, & 693, on Application for Interlocutory Injunction: Texas & New Orleans Tariff I. C. C. No. Tex. 121 & Supplements thereto; Beaumont, Sour Lake & Western Tariff I. C. C. No. 31 & Supplement 1, thereto; Texas & New Orleans Tariff I. C. C. No. Tex. 123 & Supplement 1 thereto; Texarkana & Fort Smith Tariff I. C. C. No. 176 & Supplement 2

thereto; Texarkana & Fort Smith Tariff I. C. C. No. 158 & No. 178 & Supplements 1 & 2 thereto; Texas & New Orleans Railroad Company, Tariff I. C. C. Nos. 119 and 270; Texas & New Orleans Railroad Terminal Switching Tariff No. 773–I. C. C. No. 1465.

Evidence offered by Plaintiffs in Nos. 690, 691, 692, & 693, at date of Final Hearing, January 30, 1936, viz: Certified Copies of Answer of Missouri Lines; Texas and New Orleans Railroad Company; Gulf, Colorado, and Santa Fe Railway Company; Louisiana & Arkansas Railway Company and The Texas and Pacific Ry. Co. to the Commission's questionnaire of January 14, 1932, in Ex Parte 104.

Evidence offered by the United States and the I. C. C. in Nos. 690, 691, 692, & 693, viz: Illinois Central and Yazoo & Mississippi Valley R. R. Co. I. C. C. No. 4519 and I. C. C. No. 6700; Louisiana Railway & Navigation Co. Tariffs I. C. C. No. A–578 and A–944 and Supplement No. 30; Louisiana & Arkansas R. R. Co. Tariffs I. C. C. No. 1347 and 1382, including Supplements; New Orleans, Texas & Mexico Ry. Co. I. C. C. Tariffs A–6, A–874, and Supplement and A–1017 and supplement.

Record of Testimony and Exhibits before the Interstate Commerce Commission in original form as introduced in evidence before the Court as Exhibit —, consisting of Printed Volumes 1 to 12, inclusive; of the Oral Testimony and Volumes 1 to 5, inclusive of Exhibits.

To certify which, witness my hand and the Seal of said Court at Houston in said District, this the 19th day of October A. D. 1937.

[SEAL] L. C. MASTERSON,
Clerk, United States District Court,
Southern District of Texas.
By S. F. CUNNINGHAM,
Deputy.

1076–A [Clerk's certificate to foregoing transcript omitted in printing.]

1078 [Citation in usual form showing service on John S. Burchmore, filed June 19, 1937, omitted in printing.]

1079 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division).

[Title omitted.]

Order extending time for filing record

Filed July 24, 1937

On motion of counsel for United States of America and Interstate Commerce Commission, appellants, and good cause therefor having

been shown, it is ordered that the time for filing the record and docketing the appeal in the above entitled causes in the Supreme Court of the United States be, and the same is hereby, extended to and including October 1, 1937.

This July 23, 1937.

T. M. KENNERLY,
United States District Judge.

[File endorsement omitted.]

1080 In United States District Court

In Equity No. 690 (Houston Division). In Equity No. 691 (Houston Division). In Equity No. 692 (Houston Division). In Equity No. 693 (Houston Division). In Equity No. 718 (Houston Division)

[Title omitted.]

Order extending time for filing record

On motion of counsel for United States of America and Interstate Commerce Commission, appellants, and good cause therefor having been shown, it is ordered that the time for filing the record and docketing the appeal in the above entitled causes in the Supreme Court of the United States be, and the same is hereby, extended to and including November 1, 1937.

1081 Dated September 23, 1937.

T. M. KENNERLY,
United States District Judge.

Approved this 17th day of September 1937.

JOHN S. BURCHMORE,
Attorney for Petitioners-Appellees.

[File endorsement omitted.]

1082 In Supreme Court of the United States

Statement of points to be relied upon and stipulation as to record to be printed

Filed October 29, 1937

I

United States of America and Interstate Commerce Commission, appellants, will rely upon the following points in brief and oral argument before this Court on their appeals in the above entitled causes:

1. The orders issued by the Commission in these cases, requiring the specified railroads to cease the performance of "spotting" cars

within the plants of appellees without charge in addition to
1083 line-haul rates, or payment of allowances to appellees for performing such "spotting," were within its authority under the Interstate Commerce Act.

2. It has never been, and is not now, general railroad "custom and usage" to treat the "spotting" service here involved as included in the transportation obligation under the line-haul rate.

(a) Court decisions show that there has been no such "custom and usage."

(b) Evidence of record, of many kinds, sharply disproves the existence of any such general "custom and usage."

(c) Even if the evidence established such general "custom and usage," the Commission is not bound by it, but is empowered to condemn it where, as here, it finds, upon substantial evidence, that it violates the Act.

3. The findings made by the Commission in each case are sufficient to support the accompanying order.

4. The orders are supported by substantial evidence.

5. The orders in this case should be sustained upon the authority of United States v. American Tin Plate Company, 301 U. S. 402.

II

Appellants further state that the entire record in these causes, as filed in this Court, is necessary for consideration of the foregoing
points, and that the entire transcript of record as transmitted
1084 by the clerk of the district court should be printed by the Clerk of this Court excepting those parts specified in "Stipulation Re Printing Record" filed in this Court.

STANLEY REED,
Solicitor General.
ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
E. M. REIDY,
DANIEL W. KNOWLTON,
Counsel for Interstate Commerce Commission, For Appellants.

Copy acknowledged this 23d day of October 1937.

JOHN S. BURCHMORE,
Counsel for Appellees.

1085 In Supreme Court of the United States

Stipulation re printing record

Filed October 29, 1937

It is hereby stipulated by and between counsel for the appellants and counsel for the appellees in the above entitled causes that:

1. The record of testimony and exhibits before the Interstate Commerce Commission (consisting of printed volumes 1 to 12, inclusive, of oral testimony, and volumes 1 to 5, inclusive, of exhibits) which was transmitted in original form by the clerk of the courts below to the Clerk of this Court, shall not be printed by the Clerk of this Court but shall be retained as a part of the record in
1086 these causes and may be referred to by the Court and by counsel for the parties to said causes in their briefs and arguments in said causes, excepting that the exhibits referred to in the next paragraph shall be printed as a part of the record for the convenience of the Court.

2. The following exhibits, introduced at the hearing before the Interstate Commerce Commission, and a part of the record in the District Court, are to be included in the transcript of the record: A-23, A-24, A-27, A-28, A-29, A-35, A-36, A-37, A-38, A-39, A-40, A-46, A-47, A-48, A-49, A-50, A-71, to A-77, inclusive, A-79 to A-87, inclusive, A-92, A-93, A-94, A-94½, A-104, A-105, A-105½, A-106, A-107, and A-116 to A-123, inclusive.

3. Exhibit A to each of the nine bills or petitions is identical, being a copy of the Interstate Commerce Commission's report of May 14, 1935, in Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services. Said Exhibit A shall be printed as it appears in the bill of Pan American Petroleum Corporation, et al. v. United States, No. 314, but shall be omitted in printing the petitions in the other eight of said causes, with appropriate statement of the omission and reference to said exhibit in the printed record.

4. (a) In the praecipe filed in the Pan American Petroleum and associated cases, Equity Nos. 314, 315, 317, and 331, Item No. 20 of said praecipe provides for the inclusion in the record of certain tariffs and returns to questionnaires, and letters, therein identified. The documents specified in subdivision (a) of said item 20 are not to be printed, but will be sent up as original exhibits, and may be referred to by the Court and by counsel for the parties to said causes in the briefs and arguments; (b) In the praecipe filed in the Humble Oil & Refining Company and associated cases, Equity Nos. 690, 691, 692, 693, and 718, Item Nos. 29 and 31 of said praecipe provide for the inclusion in the record of certain
1087 tariffs and returns to questionnaires therein identified. The documents specified in said Item No. 29 and in subdivision

(e) of item 31 are not to be printed, but will be sent up as original exhibits, and may be referred to by the Court and by counsel for the parties to said causes in the briefs and arguments.

5. Except as above specified, all of the transcript of record transmitted by the clerk of the District court to the Clerk of this Court shall be printed.

Dated October 28, 1937.

STANLEY REED,
Solicitor General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
E. M. REIDY,
Counsel for Interstate Commerce Commission, for Appellants.
JOHN S. BURCHMORE,
Counsel for Appellees.

[File endorsement omitted.]

(Endorsement on cover:) File No. 41995. E. Louisiana, D. C. U. S. Term No. 514. The United States of America and Interstate Commerce Commission, Appellants vs. Pan American Petroleum Corporation, The Celotex Company, Great Southern Lumber Company et al. Filed October 18, 1937. Term No. 514 O. T. 1937. File No. 42011. S. Texas, D. C. U. S. Term No. 530. The United States of America and Interstate Commerce Commission, Appellants vs. Humble Oil & Refiining Company, Magnolia Petroleum Company, The Texas Company et al. Filed October 25, 1937. Term No. 530 O. T. 1937.

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STATEMENT AS TO JURISDICTION ON APPEAL

Filed June 18, 1937

[Titles omitted]

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above entitled cases on appeal.

STATUTES

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U. S. Code Suppl. III, Tit. 28 Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, par. (4); U. S. Code, Tit. 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

DECREES

The decrees sought to be reviewed were entered April 28, 1937.

The petition for appeal was filed and the order allowing the appeal was entered, ------ 1937.

THE NATURE OF THE CASES AND RULINGS BELOW

These suits were brought by appellees to enjoin and annul four orders of the Interstate Commerce Commission entered in a proceeding, instituted by

the Commission upon its own motion, entitled *Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services.* The orders require the railroads therein named to cease paying allowances or refunds to appellees for moving or switching railroad cars to and from points within their industrial plants or performing that service free or without charge in addition to their line haul rates. The Commission first issued a general report (209 I. C. C. 11) based on the general investigation and then issued supplemental reports dealing with the terminal practices at particular industrial plants which supplemental reports are accompanied by orders directed against the carriers serving those particular plants. The orders attacked in the instant cases were issued in connection with the following supplemental reports:

Mexican Petroleum Corporation of La., Inc., Terminal allowance,[1] 209 I. C. C. 394.

Celotex Company Terminal Allowance, 209 I. C. C. 764.

Great Southern Lumber Company, Bogalusa Paper Company Terminal Allowance, 209 I. C. C. 793.

Standard Oil Company of Louisiana Terminal Allowance, 209 I. C. C. 68.

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[1] Pan American Petroleum Corporation, petitioner, in No. 314, In Equity, is successor to the Mexican Petroleum Corporation of Louisiana, Incorporated, in ownership and operation of Destrehan refinery.

Cars consigned to or by appellees are delivered to and received from them by the railroads upon interchange or "storage" tracks located upon and at the entrance to appellees' industrial plants. With their own locomotives, appellees then move or "switch" the cars from the interchange tracks to the particular points or "spots" within their plants when and as they require the contents of the loaded cars to be unloaded or the empty cars to be loaded at such "spots." (Such movement of cars to and from loading and unloading points within industrial plants is commonly called "car spotting.") On the theory that it is the duty of the railroads to perform this plant "spotting" service, appellees claim and receive from the railroads allowances or refunds out of the line-haul rates in amounts ranging from 88¢ to $1.20 for each loaded car so moved or switched by appellees.

Upon consideration of the physical arrangement of the several plants and all the circumstances and conditions under which the spotting service is performed at each of the plants the Commission stated its findings and conclusions of fact of which the following with respect to the Celotex Company are illustrative:

> We find that the respective interchange tracks as described of record are reasonably convenient points for the delivery and receipt of carload freight; that the transportation service for which the respondent car-

> riers are compensated in their line-haul rates begins and ends at said interchange tracks; that the service performed by the Celotex Company beyond those points is a plant service; and that by payment of an allowance to the Celotex Company for service performed beyond the interchange tracks on interstate shipments, respondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally and refund or remit a portion of the rates collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

The order in each case directs the carrier or carriers serving the plant of the particular appellee to cease and desist on or before a specified date and thereafter to abstain from the practices found unlawful in the accompanying supplemental report.

Hearing in the district court was had before a statutory court of three judges. Findings of fact and conclusions of law were made and a written opinion rendered. The Court held in substances: (1) that the plant "spotting" service is a transportation service which the carriers are required by law to perform; (2) that the evidence does not disclose any "abnormal conditions" in appellees' plants such as physical impossibility or refusal of appellees to allow the railroads access to plants which would relieve the carriers from the duty of

performing the spotting service; (3) that the Commission has power only to regulate the amount of allowances and to determine whether they result in unlawful preferences and discrimination, and that it, therefore, exceeded its power in issuing the orders prohibiting any allowances; and (4) that the Commission did not make findings which were essential to the validity of its orders, namely, that the allowances in these cases were unreasonable, unjustly preferential, unduly discriminatory, or otherwise unlawful. The decrees annul, set aside, and permanently enjoin enforcement of the respective orders.

The questions presented are substantial. They involve not only the sufficiency of the evidence of record and the Commission's findings to support the four orders under attack, but also the very power of the Commission to prevent railroads from paying refunds or allowances to shippers for doing anything which they and the railroads choose to call "transportation" service, regardless of whether the thing done by the shippers is, in fact a transportation service within the meaning of section 15 (13) of the Interstate Commerce Act. The cases also involve the question whether the Commission had administrative power to determine the extent of the duty of railroads under their line-haul rates and what constitutes reasonable delivery of interstate shipments by railroad at the great industrial plants of large shippers.